United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

262

No. 20,070

THE CRESCENT BED COMPANY, INC.

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

No. 20,016

UNITED STEELWORKERS OF AMERICA,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

On Petition for Review of an Order of
the National Labor Relations Board

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,070

THE CRESCENT BED COMPANY, INC.

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

No. 20,016

UNITED STEELWORKERS OF AMERICA,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

On Petition for Review of an Order of
the National Labor Relations Board

JOINT APPENDIX

INDEX

JOINT APPENDIX

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,070

THE CRESCENT BED COMPANY, INC.,

PETITIONER,

v.

NATIONAL LABOR RELATIONS BOARD,

RESPONDENT.

No. 20,016

UNITED STEELWORKERS OF AMERICA,

PETITIONER,

v.

NATIONAL LABOR RELATIONS BOARD,

RESPONDENT.

PREHEARING CONFERENCE STIPULATION

Pursuant to Rule 38(k) of the Rules of this Court, the parties, subject to the Court's approval, hereby stipulate and agree as follows:

I. THE ISSUES

A. The issues in Case No. 20,070 are as follows:

1. Whether the Board abused its discretion by declining to stay or dismiss this proceeding after the Union, on the day of the Board's

hearing, filed suit in a federal district court to compel the Company to arbitrate grievances in accordance with the parties' alleged collective-bargaining agreement.

2. Whether the Board erred in concluding that a collective-bargaining agreement between the Company and the Union came into existence on or before May 8, 1964.

3. Whether, assuming a collective-bargaining agreement came into existence on or before May 8, 1964, the Company's rescission of that agreement was justified.

B. The issue in Case No. 20,016 is as follows:

Whether the relief granted by the Board was proper and sufficient to effectuate the purposes of the Act.

II. THE JOINT APPENDIX

1. The relevant portions of the record shall be reduced to a joint appendix comprising the materials the parties shall designate.

2. The Union and the Company shall divide the cost of reproducing those portions of the record required to be reproduced by the Rules of this Court -- i.e., the Board's Decision and Order, the Trial Examiner's Decision, this stipulation and the Court's order thereon.

3. Each party shall designate such additional material as it wishes to reproduce and shall bear the cost of reproducing the material which it designates. The reproduction of the joint appendix shall be the responsibility of the Board, and shall be by multilith process.

4. The Union shall serve the Board and the Company with its designation on or before April 11, 1966. The Company shall serve the Union and the Board with its designation of additional portions of the record which it wishes reproduced, on or before April 20, 1966. The Board shall serve the Union and the Company with its additional designations on or before April 27, 1966.

5. Forty (40) copies of the joint appendix shall be reproduced under this stipulation; the required number of copies shall be filed with the Court and the remaining copies shall be divided among the parties.

6. The parties and the Court may refer to any portion of the original transcript of record or exhibits herein which has not been reproduced, it being understood that any portion of the record thus referred to will be printed in a supplemental joint appendix if the Court so directs. For the convenience of the Court, the Board will lodge with the Court the complete original transcript and exhibits.

III. ORDER OF FILING BRIEFS

1. The Board shall file the opening brief. Thereafter, the Union and the Company shall file answering briefs at the same time. Any party may thereafter file a reply brief in the time permitted by the Court's rules.

2. Each party may file and serve a typewritten copy of its brief on or before the due date, with printed copies of all briefs to be filed and served on the date reply briefs are due.

Dated at Washington, D. C.,
this 5th day of April, 1966

/s/ Marcel Mallet-Prevost
Assistant General Counsel
National Labor Relations Board

Dated at
this day of

/s/ Michael Gottesman
Counsel for United Steelworkers

Dated at
this day of

/s/ H. Struve Hensel
Counsel for Crescent Bed Co., Inc.

[Filed April 13, 1966]

PREHEARING ORDER

Before: Leventhal, Circuit Judge, in Chambers.

Counsel for the parties in the above-entitled cases having submitted their stipulation pursuant to Rule 38(k) of the General Rules of this Court, and the stipulation having been considered, the stipulation is approved, and it is

ORDERED that the stipulation shall control further proceedings in these cases unless modified by further order of this court, and that the stipulation and this order shall be printed in the joint appendix herein.

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

BEFORE THE NATIONAL LABOR RELATIONS BOARD
FIFTEENTH REGION

In the matter of:

THE CRESCENT BED COMPANY, INC., Respondent, and UNITED STEELWORKERS OF AMERICA, Charging Party.	Case No. 15-CA-2507

Room T6039, Federal Building
701 Loyola Avenue
New Orleans, Louisiana

Pursuant to notice, this matter came on for hearing at 10 o'clock a.m., Monday, October 8, 1964.

BEFORE:

HERBERT SILBERMAN, Trial Examiner.

APPEARANCES:

Jerry L. Gardner, Jr.	Fifteenth Region, National Labor Relations Board, 701 Loyola Avenue, Room T-6024, New Orleans, Louisiana, appearing as Counsel for General Counsel.
Henry J. Read and Daniel Lund	(Montgomery, Barnett, Brown and Read) 806 National Bank of Commerce Building, New Orleans, Louisiana, both appearing on behalf of Respondent.
Nathan Lipsom	1500 Commonwealth Building, Pittsburgh, Pennsylvania, 15222, appearing on behalf of Charging Party.

* * * * *

20 MR. LUND: I should put it this way, Mr. Examiner, I will qualify that. The Company, at the time, believed that a valid agreement had to be signed by the International Officers of the Union.

21 TRIAL EXAMINER: I don't understand what you are saying. Did the Company, on December 16, believe that a final agreement existed or did they believe that the instrument which had been negotiated was subject to the approval of an International Representative or an International Officer of the Union?

MR. LUND: I might say that the Company believed both of those things.

TRIAL EXAMINER: I don't understand what you mean.

MR. LUND: They believed that they had negotiated for and obtained a collective bargaining agreement with the Union and, in good faith, they signed such an agreement. The Company also believed that this agreement required signatures of the Officers of the International Union.

TRIAL EXAMINER: And that it was not final until such signatures were obtained?

MR. LUND: This is the Company's position, yes sir.

* * * * *

28 TRIAL EXAMINER: As of right now, does the Company recognize the Union as the majority representative of the employees, let's call it the Contractural Unit covered by the contract?

MR. LUND: The Company does not know the actual status of the Union at this date.

TRIAL EXAMINER: Is it that the Company wants an election to determine that at this point?

MR. LUND: The fact of the matter is that as a result of the strike, which occurred in April of this year, there were numerous replacements hired at the Company and this is the reason the Company was able to operate through the strike. At this time that is not an issue in this case, in that the Company simply does not know the Union's strength

and they don't feel that this is properly an issue to be brought up here.

TRIAL EXAMINER: Of course that's an issue in this case and I will tell you why. If the Company recognizes that the Union still has a majority, then the only question before us is whether or not the agreement, which was initially executed in December - tentatively executed in December is still in effect and that's all and it becomes a very narrow issue. On the other hand --

29 MR. READ: Just a moment --

TRIAL EXAMINER: Let me finish please? If the question of the Union's continued majority - rather I should put it - if there is a question as to the Union's majority continuing, then other matters might be relevant.

MR. READ: The issue I was going to take with what you said, Mr. Examiner, was, your premise was in reference to whether the contract was still in effect. I think there is some question as to whether the contract was ever in effect.

TRIAL EXAMINER: That's right.

MR. READ: Which is not the way you stated it and I thought it best to make this point at this time because basic to the Company's position is the fact that they were told that this contract had to be signed by the International Officers before it was effective and that was not done until such time as the Union had gotten all the mileage they could get out of delaying its return. It was only when the Union saw that this strike was an unsuccessful strike that they tried to save this Local by returning a signed contract.

TRIAL EXAMINER: I recognize the Company's position. It is an alternative position as of now. Number 1 that there never was a contract and number 2 if there was a contract the contract has been abbrogated at some point.

MR. READ: That's right.

* * * * *

WARREN V. MOREL

32 was called as a witness by the General Counsel, was duly sworn and testified as follows:

TRIAL EXAMINER: State your name.

THE WITNESS: Warren V. Morel.

TRIAL EXAMINER: Where do you reside?

THE WITNESS: Home address 1305 Russell Drive, Chalmette, Louisiana.

DIRECT EXAMINATION

BY MR. GARDNER:

Q. By whom are you employed, Mr. Morel? A. United Steelworkers of America.

Q. What is your position, sir? A. Staff Representative.

33 Q. How long have you held that position? A. For 21 years.

Q. Are you acquainted with the collective bargaining agreement between your Union and the Crescent Bed Company of New Orleans?

A. Generally, yes sir.

Q. Did you participate in any of the negotiations on that agreement? A. I did.

Q. Did you participate in the final negotiating session between the parties? A. No, I'm afraid not.

Q. Do you have any knowledge, sir, of the processing of the agreement? A. What do you mean by processing?

Q. Well, when was the agreement executed? A. I don't know the exact date.

Q. Did the agreement subsequently -- strike that. Was the agreement subsequently sent to the International at any time? A. Oh, yes. After it was signed locally.

Q. All right, what happened thereafter? A. Well, the general procedure is to send it to the District Director for signature at Tampa, Florida and he, in turn, sends it to the Pittsburgh Office for signatures of the International Officers and it is processed through the

34 Contract Department where they make copies, and so on, and they return it to the District Director who, in turn, returns it to the Staff man in the Sub-District Office.

Q. When did you receive the agreement, sir, from the District? A. Oh, it was some time after May 1st, I don't know the exact date.

TRIAL EXAMINER: I'm sorry, I couldn't understand your question.

MR. GARDNER: I asked him when he received copies of the agreement from the District.

TRIAL EXAMINER: After they had been signed by the International?

MR. GARDNER: Yes, sir.

TRIAL EXAMINER: Make that clear in the record.

Q. (By Mr. Gardner) Was the agreement forwarded directly to you from the International or from the District? A. No, it was forwarded to the District Director in Tampa, Florida, who, in turn, forwarded it to Mr. Nasser.

Q. Did you, at any time, Mr. Morel, correspond with either the District or the International in regard to this agreement? A. I did. I corresponded with the Pittsburgh Office, the Contract Department.

Q. When was that, sir? A. On May 1st I wrote a letter making inquiries as to what the delay was.

35 MR. GARDNER: At this time, Mr. Examiner, I would mark for identification as General Counsel's Exhibit No. 2 a letter which purports to be from Mr. Morel to the Pittsburgh Office and ask Mr. Morel if he will identify that?

THE WITNESS: Yes sir, it's a copy of the letter.

MR. GARDNER: What was the subject of your inquiry, Mr. Morel?

THE WITNESS: What the reasons for delay in getting copies of the signed contract back.

(Whereupon, the document above referred to was marked General Counsel's Exhibit No. 2 for identification.)

Q. (By Mr. Gardner.) Did you subsequently receive any response to your inquiry, Mr. Morel? A. I did. I got a response from Mr. Shorts through the District Director. He wrote to the District Director who, in turn, sent it on to me.

MR. GARDNER: I mark at this time, for identification, General Counsel's Exhibit No. 3, which purports to be a letter addressed to Mr. Garrison, attention Representative Warren V. Morel, signed by Clifford H. H. Shorts, and ask you Mr. Morel, if that is the letter you are referring to?

THE WITNESS: Yes, it is.

(Whereupon, the document above referred to was marked General Counsel's Exhibit No. 3 for identification.)

36 MR. GARDNER: General Counsel will, at this time, offer General Counsel's Exhibit No. 2 and Exhibit No. 3 into evidence.

TRIAL EXAMINER: Any objections?

MR. LUND: No objection, Mr. Examiner.

TRIAL EXAMINER: Very well. The documents identified as General Counsel's Exhibit Nos. 2 and 3 are received in evidence.

(Whereupon, the documents, marked General Counsel's Exhibit Nos.2 and 3 for identification, were received in evidence.)

TRIAL EXAMINER: Off the record.

(Discussion off the record.)

TRIAL EXAMINER: On the record.

Q. (By Mr. Gardner.) Mr. Morel, did you participate in any discussions with the Employer on the incentive rate, which was part of the contract? A. I did.

Q. When was that, sir? A. Oh, I don't know specific dates but it was prior to the consummation of the agreement. Mr. Nasser, the committee, and Mr. Wallen were hung on the wage section of the agreement concerning incentives and I sat in a meeting that was held in my office, at which time we worked out this particular section of the agreement. I might add, fortunately, we worked it out.

37 Q. Was this prior to the signing on the local level? A. Oh, yes, yes.

Q. Was a final agreement reached on the incentive rate between the parties? A. Oh, yes.

Q. Now, subsequent to this time, did you have any further discussions with the Company on this incentive rate? A. Not that I recall. No. I may have had. I've had many conversations concerning certain sections of the agreement, but I may have attempted to persuade Mr. Wallen to be more amenable to some of our proposals but I wouldn't know specifically what they were. I do know that on the incentive language that is incorporated into the present agreement, I did write that language and submit it to Mr. Wallen and we agreed on it in my office.

* * * * *

38 Q. (By Mr. Lipsom) I asked you to explain, just generally and briefly as you can, what was involved in the incentive modifications which were incorporated into the new collective bargaining agreement in December of 1963? A. Well, Mr. Wallen, well we recognized some runaway incentives, some out of line incentives in comparison with other incentive rates in the plant. I might say that prior to the expiration of the first agreement we had, Mr. Wallen had written the International Union asking for relief, he was in some financial difficulty. Although he did not get the relief, he got a sympathetic hearing and we recognized that we had to give him some help. That there were some problems in the plant that we could give him some help on.

TRIAL EXAMINER: Please don't wander. The question is this in essence. What was the subject of discussion or difference between negotiators for the Union and negotiators for the Company in respect to incentives?

39 THE WITNESS: Well, what we did - what I did was write language that would provide protection for the Company that when they got a runaway or excessive incentive that the Company could make a reduction. This was the intent of the language that was written into the agreement.

TRIAL EXAMINER: What you are saying is this, that if an incentive rate produced excessively high earnings the rate could be reduced?

THE WITNESS: Right.

MICHAEL NASSER

41 was called as a witness by General Counsel, was duly sworn and testified as follows:

TRIAL EXAMINER: Please state your name.

THE WITNESS: My name is Michael Nasser, Sr.

TRIAL EXAMINER: Where do you reside?

THE WITNESS: 213 Homer Blvd., Metairie, Louisiana, Jefferson Parish.

DIRECT EXAMINATION

BY MR. GARDNER:

Q. By whom are you employed, Mr. Nasser? A. The United Steelworkers of America.

Q. What is your position, sir? A. Staff Representative.

Q. How long have you held this position? A. Approximately 8 years.

Q. How long has your Union represented Crescent Bed? A. Since December 1961.

Q. Was any collective bargaining agreement executed subsequent to that date? A. There was. The first agreement --

42 Q. What was the term of that agreement? A. That was a two year agreement, expiring on November 30, 1963.

MR. GARDNER: I now mark for identification General Counsel's Exhibit No. 4, a collective bargaining agreement between Crescent Bed and United Steelworkers of America and ask if this is the collective bargaining agreement you are referring to, Mr. Nasser?

THE WITNESS: Yes sir.

MR. GARDNER: I think, just to clear the record, if nothing else --

TRIAL EXAMINER: Is there any objection to the receipt of this document in evidence?

MR. LUND: No objection.

TRIAL EXAMINER: Very well. The document identified as General Counsel's Exhibit No. 4 is received in evidence.

(Whereupon, the document above referred to was marked General Counsel's Exhibit No. 4 for identification, and was then received into evidence.)

Q. (By Mr. Gardner) Mr. Nasser, was request made by your Union at any time during the life of this agreement to modify or to terminate it? A. A request was made in August 1963.

Q. For what purpose was that? A. To modify the agreement.

43 MR. GARDNER: I mark for identification General Counsel's Exhibit No. 5 which purports to be a letter from Crescent Bed Company, attention Mr. Erwin Wallen and Mr. Michael Nasser.

Q. (By Mr. Gardner) I ask you, sir, if this is the letter you are referring to? A. Right.

MR. GARDNER: General Counsel will at this time offer General Counsel's Exhibit No. 5 into evidence.

TRIAL EXAMINER: Any objections.

MR. LUND: No objections.

TRIAL EXAMINER: Very well. The Document identified as General Counsel's Exhibit No. 5 is received in evidence.

(Whereupon, the document above referred to was marked General Counsel's Exhibit No. 5 for identification, and was then received into evidence.)

TRIAL EXAMINER: On the record.

Q. (By Mr. Gardner) Mr. Nasser, after the letter, which has been marked as General Counsel's Exhibit No. 5, what happened after, sir? A. Well, after we went into negotiations with the Company. I think it was during the month of October.

Q. Who negotiated in behalf of the Union, Mr. Nasser? A. The Local Union Committee consisting of the President, Vice-President, the Recording Secretary and myself, the International --

44 Q. Whom did you represent, sir? A. The International Union.

Q. Was an agreement reached at any time between the parties? A. Agreement was reached at the Federal Mediator Conciliator's office here in New Orleans on November 30, 1963.

Q. What was decided at that time, Mr. Nasser, if anything? A. It was decided at that time that we had reached an agreement and it would be effective immediately, as of December 1.

Q. Was the agreement signed on that day? A. The agreement was not signed on that date but we reached agreement.

Q. Who represented the Company, Mr. Nasser? A. The Company representative was Mr. Erwin Wallen.

Q. What was Mr. Wallen's position at that time, do you recall? A. He is President of the Crescent Bed Company?

Q. What position did he take on the agreement? A. He took the position that we had an agreement which became effective, December 1st.

Q. Was any arrangement made at that time for the signing of the agreement? A. Yes, we requested that the agreement be signed the following day by the parties, Mr. Wallen had to leave town that night, as I recall. In fact, he had to leave the country, he was going to Puerto Rico. There were some defective beds he had to go down there and expedite for his Company.

45 Q. Did the parties meet at any time thereafter, Mr. Nasser, to sign the agreement? A. Upon Mr. Wallen's return to New Orleans we met at his office, with the typed contracts. As I recall, there may have been six copies. The Local Union Committee and myself, along with Mr. Wallen, signatured these documents.

Q. Was there an understanding between the parties at this time that the agreement was final and binding?

MR. LUND: I object to that as leading - as a leading question, Mr. Examiner.

TRIAL EXAMINER: I will sustain the objection on the ground that it calls for a conclusion. You may ask the witness what was said by the various participants in the negotiations.

Q. (By Mr. Gardner) Do you recall, Mr. Nasser, what was said at that meeting, at the signing? A. Well, Mr. Wallen pointed out that he had already put into effect this new agreement, prior to the date of the signing, in fact, effective December 1st. Wage increases went into effect on that date.

Q. Did Mr. Wallen send you any information concerning any part of the agreement? A. Mr. Wallen sent me a copy or a letter in regards to the insurance program, which we had worked out in
46 negotiations. This letter was sent to me, I think, the latter part of December, around the 30th or the 31st of December.

MR. GARDNER: I mark, at this time, General Counsel's Exhibit No. 6, which purports to be the letter dated December 31st, and signed by Mr. Erwin H. Wallen, and I will ask you, Mr. Nasser, if this is the letter you are referring to?

MR. READ: Could we see copies of those Exhibits before they are exhibited to the witnesses?

TRIAL EXAMINER: Let me interrupt for a moment? What date was this meeting held about which you are now testifying?

THE WITNESS: The date on which the documents were signatured, sir?

TRIAL EXAMINER: That's right.

THE WITNESS: December 16th, as far as I can recall.

TRIAL EXAMINER: Now, on December 16th did Mr. Wallen say to you and to the other people present that the Company had put into effect the various changes which the Union and Company had negotiated?

THE WITNESS: Yes sir.

TRIAL EXAMINER: Did this letter, about which you are now being questioned, come up in your discussion on December 16th?

THE WITNESS: This insurance letter?

TRIAL EXAMINER: Yes.

47 THE WITNESS: Yes sir.

TRIAL EXAMINER: You may proceed. I raised the question - did you say that it's dated December 31?

MR. GARDNER: Yes.

TRIAL EXAMINER: What was said about this letter on December 16th?

THE WITNESS: I requested a letter on the insurance program.

TRIAL EXAMINER: Very well.

Q. (By Mr. Gardner) I think I was asking the witness if he would identify this as being a letter that he was referring to, General Counsel's Exhibit No. 6.

MR. GARDNER: At this time I offer into evidence General Counsel's Exhibit No. 6.

TRIAL EXAMINER: Any objections?

MR. LUND: I have no objections.

MR. GARDNER: This is one of the documents, by the way, we stipulated to.

TRIAL EXAMINER: Very well, the document is received in evidence.

(Whereupon the document above referred to was marked General Counsel's Exhibit No. 6 for identification, and was then received into evidence.)

TRIAL EXAMINER: Was a copy of General Counsel's Exhibit No. 6 mailed to you by the Company?

48 THE WITNESS: I didn't get your question, sir.

TRIAL EXAMINER: Did the Company mail you a copy of General Counsel's Exhibit No. 6?

THE WITNESS: Was this Exhibit No. 6 that you just presented to me, sir?

MR. GARDNER: Yes.

THE WITNESS: Yes, sir, it was received in the mail.

Q. (By Gardner) Mr. Nasser, you stated that on December 16th the parties signed the agreement. What did you do thereafter, if anything? A. On the date on which I received Exhibit No. 6 I sent copies of the contract, copy of Exhibit 6 with a letter attached, to District Director O. L. Garrison --

Q. Just a minute now. What did you send to Mr. Garrison? A. I sent a copy of Exhibit 6. This is the letter that you just presented to me, on insurance. I sent a copy of the agreement with a letter attached advising him that we had reached agreement and the contract became effective December 1st, 1963, as far as I can recall. I don't recall the exact words of the letter but, in effect, this is what it said.

MR. GARDNER: I now mark for identification General Counsel's Exhibit No. 7, which purports to be a letter to Mr. O. L. Garrison, Director, District 36G from Mr. Michael Nasser and ask you if this is the letter you are referring to, Mr. Nasser?

49 THE WITNESS: That is a true copy.

MR. GARDNER: General Counsel at this time will offer into evidence General Counsel's Exhibit No. 7.

TRIAL EXAMINER: Any objection?

MR. LUND: No objection from the Company.

(Whereupon, the document above referred to was marked General Counsel's Exhibit No. 7 for identification, and was then received into evidence.)

Q. (By Mr. Gardner) All right, Mr. Nasser, did you receive any response in regard to that letter and its enclosure? A. Yes, I received a letter from Director Garrison.

Q. When was that, sir? A. It was, I think, on January 6th confirming the receipt of my letter along with the documents, and advising me that he was pleased with the settlement and he was sending them up to Pittsburgh.

MR. GARDNER: I now mark and identify General Counsel's Exhibit No. 8, which purports to be a letter and ask the witness if he will now identify that as the letter he has just referred to?

THE WITNESS: Yes sir.

TRIAL EXAMINER: Any objection?

MR. LUND: No objection.

MR. GARDNER: We will offer it into evidence.

50 TRIAL EXAMINER: The document identified as General Counsel's Exhibit No. 8 will be received in evidence.

(Whereupon the document above referred to was marked General Counsel's Exhibit No. 8 for identification, and was then received into evidence.)

Q. (By Mr. Gardner) All right, Mr. Nasser, after receiving this reply, what did you do then, if anything? A. After receiving this reply from the District Director, we had copies of the agreement made in our office. The signatures of all parties were typed in and copies were presented to the Local Union Committee at the plant and to Mr. Wallen of the Crescent Bed Company.

Q. How was the copy transmitted to Mr. Wallen? A. I personally took these documents over to the plant.

MR. GARDNER: I have now marked for identification General Counsel's Exhibit No. 9, which purports to be an agreement between the Company and the Union and it contains typed in signatures of the parties to the agreement.

Q. (By Mr. Gardner) Mr. Nasser, I show you this agreement and ask you if this is the one you transmitted to Mr. Wallen? A. Yes.

Q. Sir, when -- let me say that copies were also given to each member of the Local Union. Do you recall your conversation with Mr. Wallen when you gave him this agreement?

TRIAL EXAMINER: Would you identify the date? The date of this conversation?

51 Q. (By Mr. Gardner) Do you recall the date of this conversation, Mr. Nasser? A. In regard to the date that this document was presented to Mr. Wallen?

Q. That's right. A. I think on January 9th, I am not positive, but it seems that this is what our records show.

Q. Did you testify you personally handed the copy to Mr. Wallen? A. Yes.

Q. And, what was said, if anything, at that time, sir? A. I advised Mr. Wallen that the signatured copies would be delivered to him at a later date, with all of the International Officers signatures handwritten.

TRIAL EXAMINER: Please repeat again. What did you tell Mr. Wallen when you gave him these?

THE WITNESS: As far as I can recall, I told Mr. Wallen that I had prepared a number of copies and that, since we had approval from the District Director, typed in names of all the Officers of the International Union were on this document.

Q. (By Mr. Gardner) Mr. Nasser, did you ever --

TRIAL EXAMINER: Just a minute. Let him finish.

MR. GARDNER: I'm sorry.

52 THE WITNESS: And, at a later date, when the signature copies were returned to the Office, that we would present a copy to him.

Q. (By Mr. Gardner) Was there any discussion at that time between you and Mr. Wallen as to whether the agreement would be final?

MR. LUND: I object to that, Mr. Examiner.

TRIAL EXAMINER: Objection sustained. Was there any further conversation between you and Mr. Wallen at that time?

THE WITNESS: No, not as far as I recall.

Q. (By Mr. Gardner) Mr. Nasser, did you ever receive a signed copy from the International of this agreement? A. Yes, we did.

Q. Do you recall when you received it? A. The signed copy was received in May, the exact day I don't recall. However, I think it was around the first week in May.

Q. What did you do upon receiving the signed copy, if anything, sir? A. I delivered a copy to Mr. Wallen.

Q. You personally hand carried a copy to him, sir? A. Yes.

MR. GARDNER: I mark for identification as General Counsel's Exhibit No. 10, Collective Bargaining Agreement between the parties. At this time I would offer General Counsel's Exhibit No. 9.

53 TRIAL EXAMINER: Is there any objection?

MR. LUND: I have no objection to the introduction with the reservation that I will reserve my rights to object to what these typed in matters might purport to be, on the last page of the contract.

TRIAL EXAMINER: Yes, that's correct. The Witness testified that these were typed signatures and that, in some instances, the persons whose names appeared on the document had not, in fact, signed these, so the testimony is clear.

MR. LUND: With that understanding, I have no objection.

TRIAL EXAMINER: Very well. General Counsel's Exhibit No. 9 is received in evidence.

(Whereupon, the document above referred to was marked General Counsel's Exhibit No. 9 for identification, and was then received into evidence.)

MR. GARDNER: You have referred to the carbon copy which you received in May and I show you General Counsel's Exhibit No. 10 and ask you if that is the signed copy?

THE WITNESS: Yes.

MR. GARDNER: At this time General Counsel offers into evidence General Counsel's Exhibit No. 10.

TRIAL EXAMINER: Any objections?

MR. LUND: No objections.

TRIAL EXAMINER: Very well. The document, General Counsel's Exhibit No. 10, is received in evidence.

54 (Whereupon, the document above referred to was marked General Counsel's Exhibit No. 10 for identification, and was then received into evidence.)

Q. (By Mr. Gardner) Now, Mr. Nasser, subsequent to the signing of the agreement in December by Mr. Wallen, the Local Officers, and yourself did you file any grievances under the contract?

TRIAL EXAMINER: Off the record.

(Discussion off the record.)

TRIAL EXAMINER: On the record.

MR. GARDNER: The parties have agreed to stipulate that subsequent to the signing of the Collective Bargaining Agreement on December 16th, 1963, the Company has processed grievances in accordance with the Collective Bargaining Agreement executed on that date. Up until the final step of the grievance procedure. Then, we submit that other terms of the contract have been complied with by the Company, until on or about April 23, 1964.

* * * * *

55 TRIAL EXAMINER: Let me restate a proposed stipulation and see whether or not, as I state it, the parties can join in the stipulation. Following the meeting between the Company and the Union, which was held on November 30, 1963, the Company put into effect those changes which had been agreed upon between the persons present at the meeting on November 30 and also until some time approximately in April or May of 1964 the Company processed grievances filed by the Union in accordance with the grievance procedures which were reflected in the instrument identified as General Counsel's Exhibit No. 9. Off the record.

(Discussion off the record.)

TRIAL EXAMINER: On the record. Gentlemen do you join in the stipulation that I just proposed?

MR. GARDNER: Yes, I do.

MR. LUND: It is acceptable.

MR. LIPSOM: It is acceptable.

TRIAL EXAMINER: Very well. The stipulation is accepted as part of the record. Please proceed, Mr. Gardner.

56 Q. (By Mr. Gardner) Now, Mr. Nasser, did you have any discussions with the Company subsequent to the signing of the agreement regarding the incentive rates in the contract? A. Yes, I had.

Q. When was the first discussion?

TRIAL EXAMINER: Now, may I interrupt? Your question is ambiguous as to dates. You said subsequent to signing the agreement, an instrument was signed by certain people on December 16 and other signatures were obtained in May.

MR. GARDNER: I'm sorry, you're right.

TRIAL EXAMINER: So your question is ambiguous.

MR. LIPSOM: Wait a minute. I would make this observation, Mr. Trial Examiner. You said other signatures were obtained in May. That wasn't the testimony.

TRIAL EXAMINER: If that wasn't the testimony, I think Mr. Gardner understands the purport in my mind.

MR. LIPSOM: Yes.

Q. (By Mr. Gardner) Subsequent to December 16, 1962, did you have any discussions with any Company representatives regarding the incentive rate provisions provided in the contract? A. Yes, we negotiated on the wages. We discussed the incentive section.

Q. When was the first time you discussed these things, Mr. Nasser? A. During the month of October and in November.

Q. No. My question goes to after December 16. A. Oh, after. I'm sorry, sir. After the signing of the contract there were numerous discussions regarding the section of incentive. The union took the position that the Company violated the intent of this section.

MR. LUND: Mr. Trial Examiner, I believe it is appropriate for me to object at this time rather than let Mr. Nasser get into any further conclusions as to whether or not a violation occurred.

TRIAL EXAMINER: I believe the witness is attempting to state what occurred. He said the Union took the position that the Company violated the intent of the agreement.

MR. LUND: Thank you.

THE WITNESS: By reducing from incentive which were producing in excess of 50% down below the 50% level. The discussions were on the Company's reduction on some jobs which paid or produced in excess of 80% and 90% down below the 50% level. We tried to work this problem out and a meeting was set up in March, as I recall. It was March 25th.

Q. (By Mr. Gardner) Where was that meeting held, Mr. Nasser? A. That meeting was held at the Elmwood Restaurant.

Q. Where is that located? A. In Jefferson Parish.

Q. Could you tell us who was present at that meeting? A. Present at that meeting was Mr. Wallen, Mr. Lipsom, Mr. Morel and myself.

58 Q. Now, would you please tell us what was discussed at that meeting and what was said by the parties? A. Discussions were on this incentive problem which was troubling the Company and which Mr. Wallen had called me many times in regard to during the month of March. So we tried to work out an understanding and, at this meeting, we did. We reached agreement with Mr. Wallen that any incentives which were paying in excess of 50% of base rate - over a current 60 day period, could only be reduced down to the 50% level. All incentive rates, which were not producing at the 50% level or higher, could be adjusted upwards by mutual agreement of the parties. We shook hands and we had lunch together. That was the meeting of March 23rd.

Q. Was this agreement put into writing at any time, Mr. Nasser? A. The following day, at which time this agreement was to be reduced to writing, in the form of a letter of understanding between the parties and after the local Union --

Q. Wait, just a second. Did you send this letter to Mr. Wallen at any time? A. Yes, sir. This letter was sent to Mr. Wallen.

59 MR. GARDNER: All right. I have marked for identification General Counsel's Exhibit No. 11, which purports to be a letter dated March 27, 1964 addressed to Mr. Erwin Wallen, President, from Mr. Michael Nasser, and ask you if this is a copy of the letter you are referring to? The parties have agreed also, to stipulate to the authenticity of this document?

TRIAL EXAMINER: We understand that. Any objections to the receipt of that document in evidence?

MR. LUND: No objections.

TRIAL EXAMINER: The document is received in evidence.

(Whereupon, the document above referred to was marked General Counsel's Exhibit No. 11 for identification, and was then received into evidence.)

Q. (By Mr. Gardner) Did Mr. Wallen respond to your communique? A. Yes, Mr. Wallen responded to this communication.

Q. When was that, sir? A. I think it was during the month of April.

Q. What was his position at that time? A. The letter informed me that he had, in effect, changed his mind.

MR. GARDNER: I have marked for identification General Counsel's Exhibit No. 12, which purports to be a letter dated April 15, 1964, addressed to Mr. Michael Nasser from Erwin H. Wallen, and I ask you if that is the letter you are referring to?

60 THE WITNESS: That is a copy of it.

MR. GARDNER: And I now will offer, at this time, General Counsel's Exhibit No. 12 into evidence.

TRIAL EXAMINER: Any objections?

MR. LUND: No objections.

TRIAL EXAMINER: The document is received in evidence.

(Whereupon, the document above referred to was marked General Counsel's Exhibit No. 12, and was then received into evidence.)

Q. (By Mr. Gardner) All right, Mr. Nasser. Did anything occur after that date that you recall. Let me restate that if I may. Did you have occasion to visit the plant at any time after April 15th? A. I visited the plant on a number of occasions after that date.

Q. Were you called down at any time regarding a strike of any sort, a slowdown? A. I was called on April 23rd by Mr. Wallen. He requested that I come over to the plant and intervene in a work stoppage, which was in progress at that time. I did go over to the plant.

Q. What was causing the work stoppage? A. A supervisor was assigned to perform a job within the bargaining unit.

MR. LUND: Mr. Examiner, I believe we are going rather far afield, at this point at least. Mr. Nasser's testimony is, ultimately, going to be drawing conclusions as to what the problem was in the workshop.

61 TRIAL EXAMINER: I will sustain the objection and strike the witnesses answer.

Q. (By Mr. Gardner) Mr. Nasser, when you arrived at the plant on April 23rd, who did you speak to, sir? A. I was greeted by Mr. Wallen.

Q. Who else was present at that time? A. Jomis Butler and Mr. Lowery and, sometime during that visit, Mr. McDonald.

Q. Who are these gentlemen you are referring to? A. Joseph Butler and Ernest Lowery were officers and members of the Grievance Committee.

TRIAL EXAMINER: Officers of what?

THE WITNESS: They were officers and members of the Grievance Committee of the Local Union.

TRIAL EXAMINER: I see.

Q. (By Mr. Gardner) Who was Mr. McDonald? A. Mr. McDonald, I think he had the title of Superintendent.

Q. All right, sir. What was said during that meeting? A. The problem that was in effect at that time was discussed.

Q. What problem are you referring to? A. The work

62 stoppage.

Q. All right? A. Before we went into discussion of the problem, I made it clear to the Local Union Officers and Mr. Wallen that the International Union would not tolerate or authorize any form of work stoppage and that it was a violation of the contract.

Q. Did anyone, during that discussion, convey to you the reason for the work stoppage or slowdown? A. Yes.

Q. Who was that, sir. A. Mr. Wallen and Joseph Butler.

Q. What did they say? A. A supervisor had been assigned a foreman's job --

MR. LUND: Mr. Examiner, again the testimony is obviously heresay. Now, whether or not it would come under some exception to the heresay would depend upon who he is testifying said the words.

TRIAL EXAMINER: The objection is overruled.

THE WITNESS: The supervisor was assigned to a job within the bargaining unit. As I recall, the job was dipping bed springs. That was the job title - dipping bed springs or parts. The operator, who was regularly assigned to that job, was placed on another job.

Q. (By Mr. Gardner) Do you recall the name of the operator?

63 A. Porter. This was done without being mutually agreed to by the Company and the Local Union Grievance Committee and without notification to the Local Union. Part of the problem arose, according to Mr. Wallen, from the fact that Walter Porter was not performing his job at the incentive pace and at which the job was normally worked by Mr. Porter. However, Mr. Wallen confirmed the fact, at this time, that Mr. Porter did earn a rate in excess of his base rate for that period that he worked on this specific job, that morning. Walter Porter was, at that time, terminated by the Company.

TRIAL EXAMINER: When was Porter terminated, after you arrived?

THE WITNESS: I think he was terminated, as I can recall, about a half an hour before I arrived at the plant.

Q. (By Mr. Gardner) Mr. Nasser, were there any other meetings after this one regarding this problem? A. Sir, this was not the only reason which was given to me for a work stoppage at that particular time. If you want all the details, I will be happy to present them to you.

Q. I'm sorry. I thought you were finished. Go right ahead.

A. There was also a problem in the plant, which had been in existence for some time, where the Company took the safety guards off of the machines. The Local Union had filed a complaint to that effect and nothing had been done about it. The Company had been notified by the Local Union that this equipment should be installed and got no satisfaction from the Company. I again instructed the Employees to return to work immediately.

64 Q. What time of day did this occur, Mr. Nasser? A. This occurred around noontime. The Local Union Committee went into the plant, returned to the office, and stated that the Employees refused to return to work until Walter Porter was reinstated.

Q. Is that all that occurred at that meeting, Mr. Nasser? A. I informed the Committee that I would like to have a meeting of all these local union members and officers immediately after lunch.

Q. Speak up a little bit, sir. A. At our office.

Q. At what time was that meeting held? A. That meeting was held in the afternoon.

Q. And who was present at that meeting? A. As far as I can recall, all members of the Local Union were present at that meeting.

Q. Any Company representatives? A. Yes. Mr. Wallen attended this meeting.

Q. All right, Mr. Nasser. Please tell us what was said at that meeting? A. The Local Union was advised by me, as Staff Representative, that they should return to work immediately and that the International Union would not tolerate a wildcat strike or a

65 work stoppage or any violation of this agreement that was in regards to the work stoppage that was in effect. Mr. Wallen came into the meeting and was allowed the opportunity to speak to the Employees and he advised them that he would be willing to entertain any grievances in behalf of Mr. Porter or anyone else in the Local Union, in accordance with the grievance procedure. He also went into discussion along the financial position of the Company and some other matters.

Q. Do you recall anything further, sir, that was discussed at that meeting? A. I don't recall anything further that was discussed at the meeting. It was a meeting where problems in general were discussed.

Q. Did Mr. Wallen make any request on you in regard to the strike? A. At that time?

Q. Yes. A. No. He knew for a fact that I was doing all in my power to get them to return to the job.

Q. Did he request you anytime thereafter to send him any verification of this, your position? A. Yes. On the following day, Mr. Wallen called me at my office and requested that I send to him a letter or something to the effect that the work stoppage was not authorized by the International Union.

66 Q. What did you do, sir, if anything? A. I sent Mr. Wallen a wire, a telegram, advising him that the strike was not authorized by the International Union.

MR. GARDNER: I mark for identification General Counsel's Exhibit No. 13, which purports to be a telegram dated April 24, 1964 to Mr. Wallen from Mr. Nasser, and I ask you Mr. Nasser if this is the --

TRIAL EXAMINER: You don't have to go through the preliminaries. Any objections to the receipt of the document in evidence?

MR. LUND: No objections.

TRIAL EXAMINER: Very well. The document is received in evidence.

(Whereupon, the document above referred to was marked General Counsel's Exhibit No. 13 for identification, and was then received into evidence.)

Q. (By Mr. Gardner) Mr. Nasser, was any action taken against the Local Officers or Local Union by the International Union? A. Yes. There was a representative of the International Union advised Local Officers that should this Local Union not return to work immediately that they would be suspended and the Local Union would [be] subsequently closed under administrationship.

TRIAL EXAMINER: Who said that the Officers were advised that the Local Union would be suspended and the Local placed under administration.

67 Q. (By Mr. Gardner) Was any action ever taken against them? A. Yes sir. I would like to go off the record for a second, if I can.

TRIAL EXAMINER: You have any objection, Mr. Lund?

MR. LUND: For what purpose?

TRIAL EXAMINER: I don't know. I'm just asking you if you object.

MR. LUND: I object to going off the record.

TRIAL EXAMINER: All right.

THE WITNESS: Well, let me say this. The wire was also sent down to the Local Union President notifying him that the strike was not authorized and that the Local Union was to return to work immediately. This telegram was sent, then, by Assistant District Director Mr. Richard Davidson in the absence of Director Garrison. The Local Union did not return to work. Then, the International Union placed the Local Union under administer -- administrator-ship and suspended all the Officers.

Q. (By Mr. Gardner) Who was appointed administrator? A. I was.

68 Q. Do you recall if the Company at any time publicized the fact the strike was unauthorized to the general public? A. Yes, the Company did publicize the fact, that the strike was unauthorized by the International Union and put signs in the windows, at the entrance to the plant, stating so.

Q. Do you recall what the wording on the signs were, Mr. Nasser? A. As far as I can recall they said that, "this strike unauthorized by the Union." A sign said, "permanent jobs open." Another sign said, "come on in," or something to that effect.

MR. GARDNER: I have marked for identification General Counsel's Exhibit No. 14, which purports to be a photograph of the Crescent Bed Company with the sign attested to by Mr. Nasser.

Q. (By Mr. Gardner) Is that the sign you are referring to, Mr. Nasser, that was posted on the Company? A. Yes, sir. That is one. There was another sign posted also over a door. I don't know if you have a copy of it or not.

Q. What did the other sign have on it, do you recall, sir? A. As far as I can recall, it said, "strike unauthorized and permanent employment," I'm not positively sure, you have a copy of it there.

69 MR. GARDNER: At this time I will offer General Counsel's Exhibit No. 14.

TRIAL EXAMINER: Any objections?

MR. LUND: Mr. Examiner, I would object to the introduction of this until we have established the date on which this photograph was taken, so that we can pinpoint the physical --

TRIAL EXAMINER: That is not necessary. When did you see that sign?

THE WITNESS: I noticed that sign, I think it was, on a Saturday morning.

TRIAL EXAMINER: After April 23rd?

THE WITNESS: Yes.

TRIAL EXAMINER: Now, look at the photograph, General Counsel's Exhibit No. 14. Is that photograph an exact representation of the Plant's appearance on the Saturday following April 23?

THE WITNESS: Sir, let me answer you by saying that this photograph was not taken on a Saturday. It was taken during the following week, as far as I can recall.

TRIAL EXAMINER: Well, I see.

MR. LUND: Unless Mr. Nasser took the photograph.

TRIAL EXAMINER: Did you take it?

THE WITNESS: No, sir, I didn't take it.

TRIAL EXAMINER: Mr. Nasser, the sign that you see on this photograph, General Counsel's Exhibit No. 14, to the best of your knowledge, did you observe that sign posted as it was posted in that photograph, approximately on April 30th?

70 THE WITNESS: Yes, sir and also at the strike.

TRIAL EXAMINER: Very well. Any objections to receipt?

MR. LUND: I have no further objections.

TRIAL EXAMINER: Very well. General Counsel's Exhibit No. 14 is received in evidence.

(Whereupon, the document above referred to was marked General Counsel's Exhibit No. 14 for identification, and then was received into evidence.)

Q. (By Mr. Gardner) Mr. Nasser, did you ever file a grievance on the discharge of Walter Porter? A. I did.

Q. Do you recall when you filed that brief, sir - when you filed that grievance, sir?

TRIAL EXAMINER: Are you planning to put the grievance in evidence?

MR. GARDNER: Yes, sir. General Counsel has marked for identification General Counsel's Exhibit No. 15, which is a grievance filed on Walter Porter, No. 9, 1964.

TRIAL EXAMINER: It was filed in September?

MR. GARDNER: No, sir, That's the number of the series.

Q. (By Mr. Gardner) Is that the grievance you filed on Mr. Porter? A. Yes, sir. I presented this grievance to Mr. Wallen personally.

71 TRIAL EXAMINER: Do you object to the receipt of General Counsel's Exhibit No. 15?

MR. LUND: May I inquire as to the date of the grievance?

TRIAL EXAMINER: When did you deliver this to Mr. Wallen?

THE WITNESS: It was delivered on the 24th of April or the 27th day of April.

TRIAL EXAMINER: Any objection to the receipt?

MR. LUND: Mr. Examiner, I do object; number 1 as to irrelevancy of the fact that this grievance was filed, and number 2 -- well, I will leave my objection at that point. I would like to know what basis Mr. Nasser has been able to state, with such accuracy, the date it was delivered.

TRIAL EXAMINER: You can leave that for cross examination. What is the relevancy, Mr. Gardner?

MR. GARDNER: Well, I think it shows a point at which the Company begins not honoring the Collective Bargaining Agreement. I would like to show, through subsequent testimony of Mr. Nasser, as to the disposition of this grievance. I think it may clear it up on the record.

TRIAL EXAMINER: Very well. The objection is overruled. The document identified as General Counsel's Exhibit No. 15 is received in evidence.

72 (Whereupon, the document above referred to was marked General Counsel's Exhibit No. 15 for identification, and then was received into evidence.)

TRIAL EXAMINER: The hearing is recessed until 2:30 P. M.

(Hearing was recessed at 1:40 P. M.)

TRIAL EXAMINER: The hearing will be in order.

MR. GARDNER: I think I had offered General Counsel's Exhibit No. 15.

TRIAL EXAMINER: My notes show that No. 15 was received.

Q. (By Mr. Gardner) Mr. Nasser, did you receive any response from the Company in regard to Grievance No. 9 on Walter Porter? A. None whatsoever.

Q. Were grievances at any time thereafter sent to arbitration? A. Yes, the grievances were sent to arbitration thereafter. Also grievances were sent to arbitration prior to the strike.

Q. What is the status of those grievances, Mr. Nasser? A. Those grievances are still pending.

Q. Did you receive any response from the Company in regard to arbitration on these grievances? A. I called Mr. Wallen on April 20th informing him that Grievances Nos. 5, 6, 7, 8 would be submitted to arbitration. I informed that I was sending a letter

73 out to the American Arbitration Commission advising them that we would strictly arbitrate those grievances. I asked Mr. Wallen if he would prefer to notify the American Arbitration Association and he made the request that I would send the letter in the form of a joint letter, which I did. The American Arbitration Association sent, by mail to both parties, a list of arbitrators from which we were to select one, in accordance with the existing agreement. On May 4th I received a letter from Mr. Read. To my knowledge, this was the first time that Mr. Read had entered the picture. The letter requested a copy of the signatured agreement.

MR. GARDNER: I mark for identification, as General Counsel's Exhibit No. 16, the letter dated May 4th, 1964 addressed to Mr. Michael Nasser from Mr. Henry J. Read, Attorney, and I show this to the witness.

TRIAL EXAMINER: These things have all been agreed to. You don't have to go through the normal procedure of authenticating them.

MR. GARDNER: General Counsel will offer at this time --

TRIAL EXAMINER: Wait just a minute. Are you offering the document identified as General Counsel's Exhibit No. 16 into evidence?

MR. GARDNER: Yes, sir, I am.

TRIAL EXAMINER: Any objections?

74 MR. LUND: I have none.

TRIAL EXAMINER: The document will be received in evidence.

(Whereupon, the document above referred to was marked General Counsel's Exhibit No. 16 for identification, and then was received into evidence.)

MR. GARDNER: All right, Mr. Nasser, did you receive -- did you respond in any way to Mr. Read's communication?

A. Well, sir, on the 8th day of May I delivered a copy of the signatured agreement to Mr. Wallen. On that same day I sent a letter to Mr. Read advising him.

MR. GARDNER: This letter has been marked as General Counsel's Exhibit No. 17.

TRIAL EXAMINER: Any objection to the admission of this document in evidence?

MR. LUND: No objection.

TRIAL EXAMINER: Very well. The document identified as General Counsel's Exhibit No. 17 is received in evidence:

(Whereupon, the document above referred to was marked General Counsel's Exhibit No. 17 for identification, and then was received into evidence.)

Q. (By Mr. Gardner) All right, Mr. Nasser, what happened, if anything, after that? A. Well, later, I think it was the following week, I received a letter from Mr. Read advising us that the Company was taking a position that no contract existed.

75 Q. Was this letter from Mr. Read or from Mr. Wallen? A. This letter was from Mr. Wallen, I think, the President of Crescent Bed Company.

MR. GARDNER: I mark for identification General Counsel's Exhibit No. 18 a letter dated May 12th. This letter was addressed to Mr. Nasser from Mr. Wallen.

MR. LUND; Mr. Examiner, could I inquire what the witness is testifying from in his hands?

TRIAL EXAMINER: What do you have in your hands?

THE WITNESS: All I have here, sir, are some dates that these letters were sent out.

TRIAL EXAMINER: Would you like to look at it?

MR. LUND: Yes. Mr. Examiner, I move that the witness be instructed to testify from his own knowledge before he refer to any written memorandum. I know that this is more than simply

a notation of dates and is further explanatory and I would move that he be instructed to testify from knowledge.

TRIAL EXAMINER: Very well. You may return them to the witness. Mr. Nasser put those notes in your pocket. If in the course of your testimony you think it is necessary for you to refer to your notes, mention that to counsel and I am sure, at that time, you will be permitted to do so.

THE WITNESS: I may not have to.

76 MR. GARDNER: I offer at this time General Counsel's Exhibit No. 18.

TRIAL EXAMINER: Any objections?

MR. LUND: No objection.

TRIAL EXAMINER: The document is received in evidence.

(Whereupon, the document above referred to was marked General Counsel's Exhibit No. 18 for identification, and was then received into evidence.)

Q. (By Mr. Gardner) After receiving Mr. Wallen's letter of May 12th, did you respond to that letter? A. Yes, I did. I responded to his letter. I pointed out -

TRIAL EXAMINER: Did you write him a letter?

THE WITNESS: Yes sir.

Q. (By Mr. Gardner) What did you say in that letter, do you recall?

TRIAL EXAMINER: We don't have to identify it, since the authenticity of all these documents is admitted.

MR. GARDNER: I mark for identification General Counsel's Exhibit No. 19, a letter to Mr. Wallen from Mr. Nasser. We will offer into evidence, at this time, General Counsel's Exhibit No. 19.

TRIAL EXAMINER: Any objections?

MR. LUND: No objection.

TRIAL EXAMINER: The document marked General Counsel's Exhibit No. 19 is received into evidence.

77 (Whereupon, the document above referred to was marked General Counsel's Exhibit No. 19, and was then received into evidence.)

Q. (By Mr. Gardner) All right, Mr. Nasser, after submitting your letter to Mr. Wallen on May 15th what occurred thereafter, sir? A. As I can recall, I received a letter from Mr. Wallen or Mr. Read, I don't remember which, informing me of their willingness to meet with representatives of the Union at Mr. Read's office.

MR. GARDNER: I mark for identification General Counsel's Exhibit No. 20.

TRIAL EXAMINER: Any objection?

MR. LUND: No objection.

TRIAL EXAMINER: The document identified as General Counsel's Exhibit No. 20 is received in evidence.

(Whereupon, the document above referred to was marked General Counsel's Exhibit No. 20, for identification, and was then received into evidence.)

Q. (Mr. Gardner) Mr. Nasser, did the parties meet at any time thereafter on this issue? A. Yes, we met in Mr. Read's office.

Q. When was that? A. I think it was around May 22nd, I don't quite remember.

Q. All right. Who was at that meeting? A. Mr. Morel, Mr. Lipsom, and myself representing the Union, Mr. Read, Mr. Lund, and some other gentleman, I can't remember his name.

78 Q. Please tell us, Mr. Nasser, what was said at that meeting?

TRIAL EXAMINER: Was Mr. Wallen there?

THE WITNESS: Yes, Mr. Wallen was also there.

TRIAL EXAMINER: There was a Mr. Mintz there?

THE WITNESS: Yes, sir, a Mr. Mintz.

Q. (By Mr. Gardner) All right, Mr. Nasser, please tell us what was said at that meeting, sir? A. Well, we discussed the possibilities of settling the dispute at the request of the Company. We discussed the position the Company was taking with regard to the contract and we did not reach any solution to the problem at this meeting.

Q. What position, if any, did you take on the strike? A. The position taken by the Union was that we wished to terminate the strike. We had made every effort to terminate it but, without having something to take over to the membership, we could not successfully prevail upon them to return to work. At this meeting most of the discussion was between Mr. Read and Mr. Lipsom.

Q. What position, if any, did Mr. Lipsom take on the strike?

79 A. He took the position that I just stated.

Q. Do you recall anything else, Mr. Nasser, that was discussed at this meeting? A. We discussed the problem of incentive. This was discussed by Mr. Lipsom and Mr. Read and Mr. Rollin. It was brought out that agreement had been reached on the letter of understanding by the parties and, after the Union informed the members that this matter had been resolved, the Company reneged on its position --

MR. LUND: Mr. Trial Examiner, I object to the witness - first of all, it has not been established that there was any agreement reached and, secondly, in that case I object to the witness characterizing the Company's position as having breached an agreement that hasn't been proved to be in existence.

TRIAL EXAMINER: What you have just testified to, is this what was said at the meeting? A. Right.

TRIAL EXAMINER: And who made such statements?

THE WITNESS: The statement was made by Mr. Lipsom to Mr. Wallen and Mr. Read.

TRIAL EXAMINER: And you were there?

THE WITNESS: Yes, sir, I was present also.

TRIAL EXAMINER: The objection is overruled.

THE WITNESS: I'm only stating what was discussed at the meeting. This was the question that was put to me.

80 Q. (By Mr. Gardner) What was the Company's position, if any, on the question of the Contract, Mr. Nasser, and, if so, who expressed the position at that meeting? A. Mr. Read expressed the opinion that no contract existed.

Q. All right, Mr. Nasser, after this meeting were there any letters exchanged between the parties? A. I submitted a letter to the Company stating that the Union's position was that the contract was in full force and effect and that we expected the Company to abide by this contract.

Q. Was this letter which you're referring to, which I now mark as General Counsel's Exhibit No. 21, in response to a letter from anyone?

TRIAL EXAMINER: Off the record.

(Discussion off the record.)

TRIAL EXAMINER: On the record.

MR. GARDNER: I also mark as General Counsel's Exhibit No. 22, a letter dated May 21st from Mr. Read to Mr. Nasser. I offer them at this time.

TRIAL EXAMINER: Any objection to the receipt of General Counsel's Exhibit Nos. 21 and 22?

MR. LUND: No objections.

TRIAL EXAMINER: Very well. General Counsel's Exhibits 21 and 22 are received in evidence.

81 (Whereupon, the documents above referred to were marked General Counsel's Exhibit Nos. 21 and 22 for identification, and then were received into evidence.)

Q. (By Mr. Gardner) Did Mr. Read respond to your letter of June 9th, Mr. Nasser?

TRIAL EXAMINER: Do you have such a response?

MR. GARDNER: Yes sir.

TRIAL EXAMINER: Well, show it.

MR. GARDNER: General Counsel's Exhibit No. 23.

TRIAL EXAMINER: Do you wish to offer it?

MR. GARDNER: I offer General Counsel's Exhibit No. 23.

TRIAL EXAMINER: Any objections?

MR. LUND: No objections.

TRIAL EXAMINER: The document is received in evidence.

(Whereupon, the document above referred to was marked General Counsel's Exhibit No. 23 for identification, and then was received into evidence.)

Q. (By Mr. Gardner) Mr. Nasser, were any attempts made between the May 22nd meeting and the last letter, which was dated June 12, if I am not mistaken - did you have another meeting between the parties? A. Yes, we had. A meeting at Mr. Read's office.

Q. When was that, sir? A. That was on the 22nd, I think.

Q. Of what month? A. Of May.

82 Q. Now, you testified earlier - A. This was the 2nd of June.

Q. How long did that meeting last? A. Oh, I would say about 15 or 20 minutes.

Q. Who was present? A. Mr. Morel and myself, Mr. Taylor from the Federal Mediation Service, Mr. Read, and Mr. Lund.

Q. All right, Mr. Nasser, would you please tell us what was discussed at that meeting? A. Well, sir, we discussed the existing problems which we were having on the recognition of the contract, the Company refusing to grant us, the Union, security. I think I had requested, just prior to that, a seniority list from the Company, which I did not get. And other matters. The meeting

only lasted about 15 minutes. Mr. Read had another appointment and it seemed that nothing could be accomplished at this meeting. Time was short and we adjourned.

Q. Did the Union attempt to process any grievances subsequent to this meeting? A. Yes, we processed a number of grievances subsequent to this meeting.

Q. What was the Company's position of these grievances, Mr. Nasser? A. I received no reply.

83 Q. Were grievances handed over to the Company? A. Yes. These grievances were delivered to the Company by Ernest Lawry and Mr. Wallen accepted them and the following day I was told by Mr. Wallen --

MR. LUND: I object to Mr. Nasser testifying that Mr. Wallen told him such and such. I believe this is hearsay and should be striken.

TRIAL EXAMINER: Motion granted. The witnesses answer will be striken.

MR. LIPSOM: Mr. Trial Examiner, just for my information, what portion of the witness' response is striken?

TRIAL EXAMINER: The witness' entire last answer.

MR. LIPSOM: May I make an observation on that? I don't believe that the entire content of the answer was hearsay.

TRIAL EXAMINER: That's true but it would be too difficult to separate the hearsay from the part that is not hearsay.

Q. (By Mr. Gardner) Mr. Nasser, subsequent -- by the way, when did the wildcat strike terminate, do you recall? A. I think it was on June 16th. I'm not quite sure.

Q. Subsequent to the date that the wildcat strike ended, possibly we could stipulate to that date. We are able to stipulate that the pickets came down on June 19, 1964.

TRIAL EXAMINER: May I suggest that we don't characterize the strike until it is a -- don't characterize it as a wildcat strike. I suggest that whether or not it is a wildcat strike is a point in issue in this case. Off the record.

84 (Discussion off the record.)

TRIAL EXAMINER: On the record.

Q. (By Mr. Gardner) Did Mr. Wallen or any of his counsel ever question whether your Union represented a majority of its employees? A. Never.

Q. Did you request an election at any time be held? A. No.

Q. Did any of your employees who were em -- Did any of your members who were employees of Crescent Bed relinquish their Union membership? A. No.

Q. Subsequent to the termination of the strike, or by June 19th, did the Company make any changes in terms and conditions of employment covered by the agreement? A. Yes.

Q. Could you tell us what those were, please? A. Well, the Company refused to --

MR. LUND: Mr. Trial Examiner, I have to object to this line of questioning. I don't believe these facts are at issue in this proceeding as to what has occurred since this time, especially in reference to the Company's refusal or non-refusal or to alter policy under the agreement, if there was any. This is not an unfair labor practice case growing out of these factors and they are not relative.

85 MR. GARDNER: I feel that they probably are relevant, Mr. Examiner, in view of the fact that certain changes have effected conditions of employees and they become important in the remedy of this situation. I don't know that an adequate remedy would be only to say that a contract is in existence but the fact that they have changed conditions that have effected wages, hours, and working conditions of employees involved, they may be due some remittance in this regard.

MR. LUND: Mr. Examiner, that is not at issue as to whether there is any back pay.

MR. GARDNER: You mean the Company can't --

TRIAL EXAMINER: That is not covered by your complaint, is it?

MR. GARDNER: I realize that.

MR. LIPSOM: Mr. Examiner, would it not be true, though, that proof that the working conditions have been changed without bargaining, on those changes with the bargaining representative would be embraced in 8A5 charges?

MR. GARDNER: I was getting around to that. That was to be my next question.

TRIAL EXAMINER: Well the complaint alleges a complete repudiation of the agreement.

MR. LUND: Mr. Examiner --

86 TRIAL EXAMINER: The complaint doesn't allege, as a further matter, that the Employer has made unilateral changes.

MR. LIPSOM: Well it would seem to me that embraced in the allegation that the agreement in its entirety has been repudiated would be the particular acts of the Employer in so repudiating the agreement in making these changes. This is all part of the background, at least.

TRIAL EXAMINER: Are you prepared to prove what changes were made, Mr. Gardner?

MR. GARDNER: Yes, sir. I think we can. I think a number of the changes --

TRIAL EXAMINER: All right, that's all I wanted to know.

MR. LUND: Well, Mr. Trial Examiner, I don't believe that Mr. Gardner, first of all, has in this line of questioning wished to put himself to any particular period of time. However, I believe that he is possibly referring to a period subsequent to the taking down of the pickets.

TRIAL EXAMINER: That's correct.

MR. LUND: And I object to the relevancy of this line of questioning based on the fact that the complaint at issue in this case does not specify -- it is not issued on the basis of the fact that the Company made unilateral increases. It says that they refused to bargain in that Respondent

refused to put in effect Union security provisions and it says also that Respondent refused to bargain collectively with the
87 Union and that Respondent negotiated with the Union in bad faith. There has never been a contention in these proceedings that Respondent has been guilty of an unfair labor practice due to any other --

TRIAL EXAMINER: I think paragraph 13, as well as several other paragraphs in this complaint, down this obviously. General Counsel can't have it both ways. Off the record.

(Discussion off the record.)

TRIAL EXAMINER: On the record. I shall overrule the pending objection. I consider that embraced within the allegation of the complaint, that the Company has repudiated the Collective Bargaining Agreement. It is the right of the General Counsel to show that the repudiation was effected in various ways by written letter and by the conduct of the Respondent. May I suggest that the question be reframed.

* * * * *

88 Q. (By Mr. Gardner) Mr. Nasser, from your own personal knowledge, what changes has the Company made since the termination of the strike? A. Well, the Company refused to grant holiday pay in some cases.

Q. When was that? A. Well, on the 4th of July was one. That was the day that was not included in the holidays with pay.

Q. Anything else? A. Labor Day some employees were not paid holiday pay. New rates were established on some jobs. The Company refused to accept check-off cards from Union members. The Company refused to grant overtime pay, after 8 hours. The Company took away insurance from employees. Grievances were not accepted by the Company and President. The seniority section is not abided by. The Company refused to arbitrate cases which were pending and additional cases which were presented. Employees were called into the office and questioned about Union activities.

* * * * *

TRIAL EXAMINER: The document identified as General Counsel's Exhibit No. 24 is received in evidence.

(Whereupon, the document above referred to was marked General Counsel's Exhibit No. 24 for identification, and then was received into evidence.)

* * * * *

90 Q. (By Mr. Lipsom) Mr. Nasser, do you recall your testimony about a meeting on November 30, 1963 at which time agreement was reached with the Company on a new labor agreement? A. Yes.

Q. You recall that testimony? At that time, on that day, what was your understanding as to the finality or non-finality of such agreement? A. It was my understanding that agreement had been reached effective December 1st.

Q. All right. Did Mr. Wallen express himself, on that day, as to the finality or non-finality of the agreement? A. Absolutely.

Q. All right. What did he say? A. He said, well, just as to the words he said, I don't quite remember but we agreed --

* * * * *

91 TRIAL EXAMINER: To the best of your present recollection, what did he say in substance?

THE WITNESS: That we had an agreement. That I was to have the contract typed up. That he was called out of the country and the agreement would be signatured immediately upon his return.

Q. (By Mr. Lipsom) All right. Now, you also testified about the agreements being signed by Mr. Wallen, yourself, and some of the Local Union Officers on December 16, 1963, do you recall that? A. Yes.

Q. All right. Now, again, what was your understanding as to the finality or non-finality of the document that was executed on that date? A. My understanding was that the agreement was already in effect as of December 1st. Rates were already changed. The Company was already living up to the new contract, as agreed to by both parties.

Q. All right. Do you recall any expression by Mr. Wallen, on December 16th, as to the finality or non-finality of the document he signed? A. Yes.

Q. Now, again, do you recall exactly what he said or do you recall the substance of what he said, or what do you recall?

92 A. In substance, he said that we had a contract and that he had already put into effect the changes agreed to.

* * * * *

Q. (By Mr. Lipsom) All right. Do you recall any request or any conversation by Mr. Wallen as to desiring a copy of the agreement, with the signatures of the International Officers affixed, on December 16th? A. No.

Q. Was there any such conversation that you can recall on December 16th? A. I told Mr. Wallen that, as soon as the agreements were signatured and processed, he would get a copy of it.

Q. And, did he respond to that? A. He said, that's fine. This was the same way in which the first agreement was handled.

Q. All right. Now, how was the first agreement handled, talking now about the people in New Orleans signing it?

93 MR. LUND: I'm going to object to how the first agreement was handled, unless it is shown -- well, we are concerned with how this agreement was handled, that is certainly not relevant to this issue.

TRIAL EXAMINER: Objection is overruled. Answer the question.

Q. (By Mr. Lipsom) How was the first agreement handled, in that regard? A. It was handled the same way.

Q. What do you mean by that? You mean it was signed locally? A. Right. It was signed locally and sent to the Director's Office. The other signatures were affixed and the agreements were returned.

Q. Do you have any idea as to how much time elapsed between the contracts being sent up from New Orleans and their being returned? A. On the first agreement?

Q. Yes, on the first agreement. Do you have any idea? A. Yes. If I can recall correctly, it took a couple of months.

MR. LUND: We will object, Mr. Examiner, to the witness guessing as to what occurred in 1961. If he can't state it without hearsay, I think the testimony should be striken.

94 MR. LIPSOM: Mr. Examiner, I think it is for the Trial Examiner to evaluate the validity of the response. All he can testify to is what he remembers.

THE WITNESS: As I can recall, the first agreement was returned in March.

TRIAL EXAMINER: I want to hear the answer and then I will rule on the objection. Answer the question.

THE WITNESS: As I can recall, it was in the month of March.

Q. (By Mr. Lipsom) In what year? A. In 1962.

TRIAL EXAMINER: I'm going to strike the witness' answer. When was the first agreement signed by Crescent Bedding and the Local representatives of the Union?

MR. LIPSOM: That document is in evidence.

THE WITNESS: In December of 1959.

TRIAL EXAMINER: You mean in the year 1961?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: And when did you -- Did you receive this contract from the International Officers with their signatures affixed, referring to the 1961 contract? Did you personally receive the 1961 contract between the Steelworkers and Crescent Bed?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: Were the signatures of the International Officers affixed?

95 THE WITNESS: Yes, sir.

TRIAL EXAMINER: And can you recall, approximately, when you received that contract?

THE WITNESS: I think it was in March. I am not positively sure.

TRIAL EXAMINER: Well, might it have been in January of 1962?

THE WITNESS: No, sir. It was at a later date. Maybe Mr. Wallen will recall it.

TRIAL EXAMINER: It wasn't in February?

THE WITNESS: As I can recall it, it was in the month of March.

TRIAL EXAMINER: Any further questions, Mr. Lipsom?

MR. LIPSOM: Yes, one or two more.

Q. (By Mr. Lipsom) Now, Mr. Nasser, directing your attention to Article 8, Section 6, Paragraph D, Sub-Paragraph D of General Counsel's Exhibit 9 or 10, I tender you a copy here, is it correct to say that that was an addition to the contract, in that language? A. Yes, it was. This is a new section.

Q. All right. Now, would you mind telling us what the purpose was, as you understood it, for the insertion of that language?

* * * * *

96 THE WITNESS: Sometime during the 1963 Mr. Wallen requested that the Union give him some relief on the incentive

97 rates which were then in effect under the terms of that agreement. When I say relief, he requested that some rates be adjusted downward. He stated that there was runaway incentive, in some cases, and, in some cases, the incentive rate was not producing at all. We could not grant this relief, since we had a contract in effect. We advised Mr. Wallen that he should send a letter to Garrison requesting some relief. Mr. Garrison advised Mr. Wallen that the Union was willing to cooperate with him to the fullest extent. However, we could not give him any relief at that particular time. We could not change rates which were already contracted out. We had an expert come in, paid by the Union, to study this rate structure and the job set-up in this plant of Mr. Wallen. There was full cooperation from both parties. Recommendations were made to the Company and to the Union where Mr. Wallen would receive some relief in the coming agreement. I requested that Mr. Wallen study these jobs, use the table, and recommendation which was given to him, and to be prepared to present to the Union, on resumption of negotiations, to modify the current agreement, to have these figures ready so that we could go into working out these particular rates. When it came time to start negotiations, these figures were not available. The Company was notified that we wished to modify the agreement in August. It was during the month - the latter part of October and November

98 that we finally got into negotiations. The position which was taken by the Committee and myself, at first, was that we demanded a percentage increase on the incentive, where as it was at that particular time set up. Of course, we could not reach an agreement on this basis. Mr. Wallen pleaded with the Union to recognize his problem on this incentive. Mr. Wallen and Mr. Morel met in my presence and we worked out this language whereby the Company would have the right to reduce these high

incentives on jobs which were producing in excess of 50% of the hourly rate.

MR. LIPSOM: Mr. Nasser, let me interject at this point. What was your understanding of how this modification was to take place. Go into a little more detail at this point, if you will.

* * * * *

99 THE WITNESS: Yes. It was the intent that the intention was that no job, which was producing below 50% on incentive could be adjusted downward, it would only be adjusted upward.

Q. (By Mr. Lipsom) What about the rates above 50%? A. The rates above 50% could be reduced down to the 50% level. This is what the intention was, this is what came out in discussion, and this is what the Local Union was told.

Q. All right. Now, subsequent to the negotiations and the contract being written up, did the Company take a position different from what you have just stated you understood?

* * * * *

Now, did the Company take a different position as to the meaning or application of that language than what you have just stated, subsequent to the contract being written up?

THE WITNESS: Yes. The Company took the position on jobs that were paying even as much as 100% and saying it could be reduced down to as low as 1%.

100 Q. (By Mr. Lipsom) I see. A. With no limitation whatsoever.

* * * * *

102 CROSS EXAMINATION

Q. (By Mr. Lund) Mr. Nasser, did you state that you took part in the negotiations in the alleged agreement in December and November? A. Yes.

Q. In what capacity did you take part? A. As Staff Representative.

Q. And, at the time you were negotiating this contract, did you have full and final authority to bind the International Union?

MR. LIPSOM: Objection to that. It calls for a legal conclusion by the witness.

TRIAL EXAMINER: I will overrule it.

THE WITNESS: As far as I am concerned, yes. I have never had an agreement returned on me, that I signed.

Q. (By Mr. Lund) I'm not asking you that. I'm asking you
103 if you had full and formal authority to bind the International Union on a contract as to all the provisions stated therein. A. Well, let me state --

Q. Do you or don't you, Mr. Nasser? That's what I am asking. A. Yes, but I would like to qualify this answer, if you don't mind.

Q. All right. A. I feel that I have the authority to do this. However, it is a matter of procedure that the International Officers signatures are affixed to every agreement --

Q. You haven't answered my question, Mr. Nasser. Does your signature on a contract bind the International Union as to all of the terms and conditions stated therein?

MR. LIPSOM: I will object, Mr. Examiner. The witness has answered.

TRIAL EXAMINER: Let me hear your objection.

MR. LIPSOM: In the early part of his response he stated his opinion, which is all he can state to that question.

TRIAL EXAMINER: I overrule the objection.

MR. LUND: Do you remember the question, Mr. Nasser?

THE WITNESS: Yes, I thought I answered it when it was first put to me.

Q. (By Mr. Lund) Here is the question. Does your signature on a contract, without more, bind the International Union, in this case the Steelworkers, as to all the terms and provisions of that contract? A. Sir, I couldn't be certain of that. That would have to be determined by the procedure of the law. I don't know.

104 Q. And, as I understand, the contract that you sign is not a contract until it is determined that it is, somewhere else, is that right?

MR. LIPSOM: That is argumentative. Objection.

TRIAL EXAMINER: I overrule.

THE WITNESS: This may be what you understand.

Q. (By Mr. Lund) I'm asking you, Mr. Nasser. A. I'm telling you that if you understand it this way, it doesn't mean that it's right.

Q. I'm asking you if my understanding is correct? A. I don't know, sir.

Q. You don't know. Is this why you send the contract to other officers after your signature? A. This is a procedure in accordance with our constitution.

Q. Why do you follow that procedure? A. Because it is the policy of the Union. It is in the constitution of our Union, it is the law of our Union.

Q. What does your constitution say, Mr. Nasser?

THE WITNESS: May I read it, please?

TRIAL EXAMINER: Do you have a copy, Mr. Lipsom?

MR. LIPSOM: Yes, I do.

TRIAL EXAMINER: You have in your hand a copy of the constitution of the United Steelworkers of America. Would that answer the question?

105 THE WITNESS: "The International Union shall be the contracting party in all collective bargaining agreements and all such agreements shall be signed by International Officers."

MR. LUND: Would you mind if I saw that?

Q. (By Mr. Lund) What is the second provision that you read? I don't see it there. A. I only read one provision.

Q. Well, having read that, Mr. Nasser, do you know now whether or not you have final and complete authority to bind the International Union to a contract?

MR. LIPSOM: I object to that.

TRIAL EXAMINER: Sustained.

MR. LUND: Mr. Examiner, I would like to identify the portion of the document that Mr. Nasser read into the record. This is a document entitled "Constitution of International Union, United Steelworkers of America, adopted at Miami Beach, Florida, September 21, 1962." Mr. Nasser read a provision beginning at page 75 of that document, Article XVII, entitled Contracts Section 1.

Q. (By Mr. Lund) Now, Mr. Nasser, was it because of that provision in your constitution that you forwarded the contract to your district office and subsequently to the International?

106 MR. LIPSOM: Mr. Trial Examiner, I have already objected to that and it has been sustained.

TRIAL EXAMINER: No, no it wasn't.

MR. LIPSOM: Well, I object in any case.

TRIAL EXAMINER: I overrule the objection. Can you answer the question?

THE WITNESS: Yes, sir. My position is this. That I have been authorized and commissioned to represent this Union and this entitles me to perform all lawful acts pertaining -

MR. LUND: Mr. Examiner, could we strike this response?

TRIAL EXAMINER: Motion granted. May I make a suggestion? The witness testified he doesn't know what his authority is. Now, if you have no objection and Mr. Lipsom has no objection, I understand Mr. Lipsom is an attorney for the International, perhaps he can advise you as to what the authority of the

Mr. Nasser, in fact, is and perhaps this can be introduced by way of stipulation.

MR. LUND: Mr. Examiner, I believe it is especially pertinent, though, to see what authority Mr. Nasser had in this case.

TRIAL EXAMINER: Of course I am concerned with what authority he had in this case. I just feel that might be a more expeditious way of explaining it. Go ahead, continue with your questions. What do you have before you, Mr. Nasser? I don't want to see it, just tell me.

107 THE WITNESS: This is a card from the United Steelworkers of America signed by International President and International Secretary-Treasurer.

TRIAL EXAMINER: May I ask that you put that in your pocket? Proceed.

Q. (By Mr. Lund) Mr. Nasser, is it because of Article XVII, Section 1 of the constitution that you forwarded the contract through the channels of the District Office and the International Office for signature? A. This is the procedure, sir.

TRIAL EXAMINER: Is the answer yes?

THE WITNESS: Now, what was that question?

Q. (By Mr. Lund) I will state it one more time. Is it because of your constitution, Article XVII, Section 1 that you forwarded the contract through the channels of the District Office and the International Office for signatures? A. Yes.

Q. Mr. Nasser, are you an officer of the International Union or what is known as an International Officer? A. I am a representative of the International Union.

Q. But you are not an International Officer, is that right? A. I am not an International Officer.

Q. Mr. Nasser, in your experience as a representative of the International Union have you found that a contract can be passed through the channels, according to the procedure we have outlined, and returned within a short period of time?

108 MR. GARDNER: I object to that, Mr. Examiner.

MR. LUND: I will rephrase it, Mr. Examiner but I don't see the basis for the objection.

TRIAL EXAMINER: I will overrule the objection. Answer the question.

THE WITNESS: Sir, there is thousands of agreements that are processed out of the Pittsburgh Office. As to the timing of the processing of these documents --

Q. (By Mr. Lund) I realize, Mr. Nasser, you are not there at the time. But I am asking in your experience - if it has been your experience that it is possible for a contract to be processed through the Tampa and Pittsburgh Offices in a reasonable period of time?

TRIAL EXAMINER: What do you define as "a reasonable period of time"?

Q. (By Mr. Lund) How about within about one month? A. As far as I am concerned, I would say a reasonable period of time would mean a period of time of approximately three or four months. As long as we're working under a contract or agreement that we have a contract --

Q. (By Mr. Lund) Has a contract ever been processed in less than that period, Mr. Nasser? A. Less than what period, sir?

Q. The three or four months that you stated? A. Yes, certainly.

109 Q How short a time? A. Well, I couldn't exactly say the extent of time involved but a much shorter period.

Q. Well, within a month? A. Yes.

Q. Within less than a month? A. I wouldn't say less than a month, but within a month.

Q. Mr. Nasser, you stated on direct examination that in December of 1963, when you typed up the agreement that was allegedly consummated between the parties and was signed by

Mr. Wallen, in his office, that at that time you felt there was a valid and binding agreement, is that correct? A. Yes, sir.

Q. Now, Mr. Nasser, would you still feel that way in light of the provision of the constitution which you have read for us this morning? A. Absolutely, sir.

Q. Mr. Nasser, in spite of that provision that you have read, what is your impression as to the meaning of the weight given the signatures of the International Officers?

MR. GARDNER: I object.

TRIAL EXAMINER: I sustain the objection.

Q. (By Mr. Lund) Do you feel that the signatures of the International Officers have no meaning in a contract?

110 MR. GARDNER: I object.

TRIAL EXAMINER: Sustained.

Q. (By Mr. Lund) Mr. Nasser, is the signature of the International Officers necessary to the contract?

MR. GARDNER: I object.

TRIAL EXAMINER: Sustained.

MR. LUND: Mr. Trial Examiner, we went into this area once before, early in the proceeding, with Mr. Morel as to who had to sign these contracts and we've gotten the constitutional provision in and I am interested in Mr. Nasser's ideas on this.

TRIAL EXAMINER: Well, I don't know how relevant his ideas are. He has already expressed his own view of his authority and when you pressed him hard enough he said he's not altogether sure of what his authority is. Now you do have in evidence the pertinent provision of the constitution, you have a couple letters of transmittal, which the General Counsel put into evidence particularly General Counsel's Exhibits 7 or 8 from which certain inferences can be drawn as to the authority of Mr. Nasser.

Q. (By Mr. Lund) Mr. Nasser, when was the contract that we have before us delivered to the Respondent? A. What contract do you have before you, sir?

Q. I mentioned the contract that we have before us, the one --

111 TRIAL EXAMINER: There is testimony as to deliveries.

MR. LUND: That is GC 10.

TRIAL EXAMINER: The one with the signatures?

MR. LUND: That's the one with the signatures.

TRIAL EXAMINER: Is this preliminary because that is established by letter as well as testimony already.

THE WITNESS: May 8th, if you want me to answer.

Q. (By Mr. Lund) All right. Mr. Nasser, had Mr. Wallen made inquiries of you as to the whereabouts of this contract prior to this time? A. No, not in a sense. We talked about it coming down and there didn't seem to be anything too important about receiving a true copy. We were working under an agreement and that sufficed.

Q. Did Mr. Wallen ever request you to send him a copy of the contract? A. Not as I recall.

Q. He did not? I see . Is it not a fact that at the time the contract was delivered the strike had already occurred on April 23rd? A. That's right.

Q. And, is it a fact that the strike, at this time, was not successful?

MR. GARDNER: I object to that.

THE WITNESS: I think it was very successful, sir. However, it was not authorized.

112 TRIAL EXAMINER: I will sustain the objection. Strike the witness' answer.

MR. LUND: Mr. Examiner, I wonder if I might request, at this point, that you reconsider that last ruling in order to enable me to state my position on the question of that because, as the pleadings in the case show, it is the Company's position that because of the unsuccessfulness of the strike, or as a result of the unsuccessfulness of the strike, the Union signed and

returned the contract. They felt at that point that they couldn't get anymore mileage out of it as a pressure point in order to change the incentive rates. We feel that it is wholly relevant from that point of view.

* * * * *

114 Q. (By Mr. Lund) Mr. Nasser, do you recall the date the strike began? A. Yes.

115 Q. I believe that you testified that you recalled that the contract was delivered to Mr. Wallen at Crescent Bed Company at the beginning of the strike, is that right? A. The contract was delivered to Mr. Wallen after the wildcat strike.

Q. I see. And, at that time, Mr. Nasser, were there pickets at the plant? A. There were pickets at the plant. However, all unions that were affected in making deliveries and so forth to Crescent Bed Company were notified by the Steelworkers Union that the strike was unauthorized and we advised them to make their deliveries.

Q. I see. So, the picket lines were being crossed, is that correct? A. Absolutely.

Q. Were they being crossed by deliverers as well as applicant's for positions? A. Right.

Q. Do you know of your own knowledge that Mr. Wallen -- strike that. Were Mr. Wallen's people allowed or were they able to cross the picket lines? A. Sir, I wasn't at the picket lines. I don't know.

Q. Well, Mr. Nasser, were you in contact with the strikers? A. I was in contact with them from time to time and trying to make an effort to get them to return to work.

116 Q. Mr. Nasser, you testified here previously that a dispute arose in connection with the incentive pay rates at the plant, is that correct? A. Did you say arose?

Q. Yes. A. Right.

Q. What was the first notice that you had of that dispute? A. That was in March.

TRIAL EXAMINER: What are you referring to? What dispute?

MR. LUND: I am referring to the difference of opinion on the incentive pay rates.

TRIAL EXAMINER: The witness' testimony on direct examination was that the strike was precipitated by the discharge of Porter. Of course, the witness testified that there was an underlying problem and the discharge of Porter brought this to a head and the men went out on strike.

THE WITNESS: Right, sir.

TRIAL EXAMINER: Now, with that in mind, please direct your questions.

MR. LUND: I was not directing that question entirely to the strike situation, sir.

TRIAL EXAMINER: Then I don't understand what you're doing.

MR. LUND: It has been the Company's contention in this proceeding that the Union engaged in a pattern of action inconsistent with the existence of an agreement and that this started long before the act of the discharge of Porter, just to pinpoint one thing.

117

Q. (By Mr. Lund) Mr. Nasser, were you notified, or did you have knowledge of, either from the Respondent Company or from the Local Union members of their discontentment with the provisions of the contract with regard to incentive rates? A. Yes, sir. Both parties.

Q. Were they, in fact, unhappy about it? A. Right, sir.

Q. I see. And, when did they first make this knowledge available to you? A. I think it really got to a head in the month of March.

Q. I see. But, when were you first notified of this -- that there was unrest concerning the incentive rates? A. Well, I think it was in the month of March, sir.

Q. What were the conditions at the plant in March when you went in about this, Mr. Nasser? A. What were the conditions?

Q. Yes, sir.

MR. GARDNER: I object. That is a vague question.

TRIAL EXAMINER: Sustained.

Q. (By Mr. Lund) Mr. Nasser, were you advised at that time of a slowdown in existence at the plant? A. Yes. Mr. Wallen was concerned with the decrease in productivity on some job in which the incentive rate was decreased to a great extent.

118 Q. Did he advise you that a slowdown was occurring at that time? A. I received a letter to that effect.

Q. I see. Did you take steps to eliminate this? A. I'd say, yes, sir.

Q. Did you -- A. I informed Mr. Wallen in answer to his letter that the slowdown was not authorized by the International Union.

Q. Did you see a slowdown in evidence at the time? A. Did I see a slowdown in evidence at the time, sir? No sir, I didn't see a slowdown in evidence.

Q. Did the Local Union members contact you at any time during this period? A. I am contacted constantly by the Local Union members, sir.

Q. Were you aware of the slowdown through them, by any chance? A. No, sir. I have never seen the production records, sir.

Q. I see. Mr. Nasser, I want to direct your attention to the strike again and the meeting in the offices of Montgomery,

Barnett, Brown, and Read on or about April 22nd, and you stated on your direct examination that you wanted to initiate efforts to eliminate the strike but without having something to take over to the membership, you could not successfully prevail upon them to return to work.

119 MR. GARDNER: I might say here that the date is incorrect. I think it is May 22nd.

MR. LUND: I'm sorry. May 22nd.

Q. (By Mr. Lund) Do you recall having made that statement? A. The statement was made by Mr. Lipsom not by myself.

Q. I'm talking about your direct examination. A. Did I make this statement on my direct examination? I stated that this is part of the discussion that developed in this meeting.

Q. Do you also recall that in the meeting with the Federal Mediation and Conciliation Service that they were also apprised of this fact? A. They were what?

Q. Also apprised of this fact. A. Of what fact?

Q. I will state it to you again. It was stated that nothing could be done to terminate the strike situation unless there was some concession on the part of the Company. Without that you could not -- A. That was in the first meeting, right? The Federal Mediation and Conciliation Agency wasn't present at the first meeting.

120 Q. I understand, Mr. Nasser, that you were powerless to induce these men back to work without some concession on the part of the Company?

MR. GARDNER: I object to that.

TRIAL EXAMINER: Sustained.

Q. (By Mr. Lund) Well, Mr. Nasser, what was the reason that you could not effectively terminate the strike situation?

MR. GARDNER: I object.

TRIAL EXAMINER: Overruled.

THE WITNESS: Sir, I determined this fact because I worked day and night in trying to get these people to return to work.

TRIAL EXAMINER: In your best judgment why did they not return to work when you asked them to do so?

THE WITNESS: In my best judgment, they wanted Porter reinstated before they would return to work.

Q. (By Mr. Lund) I see. And, this is the only reason why they would not return to work? A. To my knowledge, this is the only reason that they would not agree to return to work.

Q. Then, Mr. Nasser, what did you mean by the statement that without having something to take over to the membership - A. Well, first let me say, sir, that the position of the Union was that the Company could take whatever action it saw fit against the strikers. However, they had recourse to the grievance procedure. They felt that whatever action was taken by the Company was unjust. This is our position.

121 Q. Well, thank you for that. But, what did you intend about a statement that you testified to earlier that you could not terminate the strike situation without something to take over to the employees?

A. This statement was not made by me in the meeting. It was made by Mr. Lipsom to Mr. Read.

Q. Well, I recall that this was a statement on your direct examination. A. Yes, sir.

Q. What did you mean by that?

TRIAL EXAMINER: The witness said that he testified not as to what he told Mr. Read but what he heard Mr. Lipsom tell Mr. Read. Now, do you want the witness to say what Mr. Lipsom meant?

MR. LUND: I don't want to go back through the record on this but I don't recall that that is the way that Mr. Nasser stated the proposition.

TRIAL EXAMINER: Well, you can establish it now. I understand the witness now to deny that he made the statement himself, but only that he heard Mr. Lipsom make it. You may proceed.

Q. (By Mr. Lund) Do you deny, now, that you made that statement but that you only heard Mr. Lipsom make that statement at that meeting of May 22nd? A. I did not make the statement, sir. Your question was --

TRIAL EXAMINER: That's enough.

122 MR. LUND: I have no further questions of Mr. Nasser at this time.

* * * * *

ERNEST LAWRY

was called as a witness by the General Counsel, was duly sworn and testified as follows:

* * * * *

DIRECT EXAMINATION

Q. (By Mr. Gardner) By whom are you employed? A. Crescent Bed Company.

Q. Do you hold any position in the Union at the present time, Mr. Lawry? A. No. The Union is placed under administership and I was placed just as chairman just to handle grievances by the International Representative, Michael Nasser.

Q. Did you hold any position prior to the strike of April 23rd? A. Yes. I was vice-president of the Local.

123 Q. Did you attend all the meetings on the negotiations involving the contract? A. Yes, I did.

Q. Did you attend the meeting of December 16, 1963 in which the agreement was signed by the Local Officers and Mr. Wallen? A. Yes, I did.

Q. Did you sign the agreement on that day? A. Yes.

Q. Were copies of that agreement given to any of the parties present? A. Yes. It was all given to the Union Officers and Mr. Wallen had a copy.

Q. Did anyone, to your recollection, at that meeting state that that agreement was not final until signed by the International Officers in Pittsburgh?

MR. LUND: I object to that, Mr. Examiner, as a leading question.

TRIAL EXAMINER: Overruled.

Q. (By Mr. Gardner) What was your answer? A. No, I never heard anyone say anything about that.

Q. Subsequent to the strike, June 19th, did you attempt personally to file any grievances with the Company? A. Yes, I did.

124 Q. When did that occur? A. Around the latter part of October. I brought in some grievances, 10 to 13, 1964, to Mr. Wallen.

Q. And what was said at that time? A. Well, around the 2nd of September I believe we had a meeting, it wasn't concerning this particular thing, and after the meeting was over Mr. Wallen told me that he had those grievances and he didn't recognize the Union, that I could give them back to the International or he would throw them in the trashcan along with some check-off cards that I had brought to him also.

Q. Did you hand the check-off cards to him on the same day you handed the grievances to him? A. Yes, sir. The grievances and the check-off cards together.

MR. READ: What was the date of this?

TRIAL EXAMINER: On what date did you deliver those check-off cards and grievances to Mr. Wallen?

THE WITNESS: I don't remember the exact date but I think it was the latter part of October.

MR. READ: What year?

THE WITNESS: This year. I mean September, this year. I beg your pardon, I think that was the latter part of August and was delivered around the 2nd of September, the following week I got those back.

* * * * *

125 Q. (By Mr. Gardner) Mr. Lawry, has the Company recently handed out any letters to its employees on Company policy? A. Yes, we had a letter I think it was issued around the 1st of September, attached to our payroll checks, concerning holidays and so forth.

126 MR. GARDNER: General Counsel has marked for identification General Counsel's Exhibit No. 29, which purports to be Company rules, Company policy rather, dated September 1, 1964.

TRIAL EXAMINER: Any objection, Mr. Lund?

MR. LUND: I have no objection to this.

TRIAL EXAMINER: Very well. The document identified as

General Counsel's Exhibit No. 29 is received in evidence.

(Whereupon, the above document referred to was marked General Counsel's Exhibit No. 29 for identification, and then was received into evidence.)

* * * * *

127 ERWIN H. WALLEN

was called as a witness by and on behalf of the Company, was duly sworn and testified as follows:

TRIAL EXAMINER: State your name, please.

THE WITNESS: Erwin Wallen. E-R-W-I-N Wallen W-A-L-L-E-N

TRIAL EXAMINER: Where do you reside?

THE WITNESS: 1820 Jefferson Avenue, New Orleans, La.

DIRECT EXAMINATION

Q. (By Mr. Lund) Mr. Wallen what is your position with the Respondent, Crescent Bed Company, Inc.? A. I am President of Crescent Bed Company.

128 Q. I see. And, as such did you participate in negotiations concerning a contract the latter part of 1963? A. Yes, I did.

Q. And, was a contract written out and signed by you? A. Yes, it was.

Q. At that time, Mr. Wallen, what other signatures were on the contract? A. At the time I signed it?

Q. Yes. A. Well, before it left my office, I don't remember the rotation of signatures, but before it left my office the officers of the Local Union had signed the contract, Joseph Butler, Fred Squire, and Ernest Lawry.

Q. Those were the signatures on the contract at that time? A. Before they left my office, yes.

Q. Approximately when was this, Mr. Wallen? A. It was around December 15 and 16, 1963, right around there.

Q. I see. And, what happened to the contract, after you signed it? A. Mr. Nasser took all the copies, as he indicated, which would be sent down to the appropriate offices for signature and so forth.

129 Q. I see. And, was a copy of the agreement left with you? A. Yes, it was.

Q. And, what appeared on the signature page of this contract, the one that was left with you, if anything? A. I am sure the copy that was left with me had no signatures on it, it was one of the blank copies.

Q. I see. Mr. Wallen, I mark for identification a document marked as Crescent No. 1 and ask you if you can identify that? A. Yes, this is the copy of the contract that was left with me at the time I signed the other copies. I forgot how many copies I signed, I don't remember.

Q. I see. And, do any signatures appear on the signature page? A. No, there are none.

MR. LUND: At this time, Mr. Examiner, I would offer into evidence a document marked for identification Crescent No. 1.

TRIAL EXAMINER: I would like to have it marked Respondent No. 1. Any objection?

MR. GARDNER: I would like to ask the witness one question a voir dire, if I may.

VOIR DIRE EXAMINATION

Q. (By Mr. Gardner) There are certain markings on the agreement, Mr. Wallen. Were those put on by you? A. Yes, sir.

130 TRIAL EXAMINER: Very well. Respondent's Exhibit No. 1 is received in evidence.

(Whereupon, the document above referred to was marked Respondent's Exhibit No. 1 for identification, and then was received into evidence.)

Q. (By Mr. Lund) What were you told by the representatives of the Union at the time you signed the contract? A. In reference to what?

Q. What were you told in regard to the future course of handling the contract? A. Well, it was more or less routine, you might say.

It had to be sent to the District Office, to the Pittsburgh Office, and then it would be returned to me.

Q. Did you understand it had to be signed by the other Officers, is that correct? A. Yes.

Q. Mr. Wallen, after the signing, in your office, on or about December 15, was the contract returned to you promptly? A. The copy that I have there, yes. You mean the signed copy?

Q. I am referring to the signed and executed copy. A. No.

Q. I see. Subsequently did a dispute arise in regard to the incentive rates at the plant? A. Yes.

131 Q. What was this dispute, Mr. Wallen? A. Well, after the rates were issued, as provided under the contract that I had signed there, it had been brought to my attention, I guess not too long afterwards - I think the rates were issued around the 10th of January, if I remember properly, some place in there, and it was about two weeks after that that the dispute arose, so to speak, and it was brought to my attention. Frankly, I don't remember if Mr. Nasser brought it to my attention or the Union Officers - that this isn't the way it was intended to be, so to speak, and that I should change these rates to read the way they understood it to read, so to speak.

Q. What was the nature of that dispute? A. Well, the rates were adjusted. Those earning in excess of 50% of the base rate were adjusted to what the Company felt was an equitable rate, in many cases more than equitable because we realized that we were adjusting rates - wages. But, their dispute was that they just didn't want, or didn't realize, or didn't want to accept the fact that they were taking home less pay for doing certain work where previously they had been getting so much more money, so to speak.

Q. Mr. Wallen, were these adjustments that you made in accordance with the contract that you signed in December? A. Yes.

Q. And, what provision of that contract, Mr. Wallen, were these adjustments made under? A. I believe it is that 6d Section, Article VII, is it?

132 Q. Let's look at General Counsel's Exhibit No. 10. A. That was Article VIII, Wages Section 6d.

Q. All right, thank you. Now, Mr. Wallen, is this Article VIII, Section 6d, which you just identified, a provision new to this contract as distinguished from the prior contract? A. Yes, it is.

Q. I see. I understand that the Union sought to have you alter --

MR. GARDNER: I object to that.

TRIAL EXAMINER: Let him finish the question. Go ahead.

Q. (By Mr. Lund) The union sought to have you alter the incentive rates that you had established subsequent to the signing of the agreement in 1963?

MR. GARDNER: I object.

TRIAL EXAMINER: Why?

MR. GARDNER: I withdraw the objection.

TRIAL EXAMINER: Answer the question.

THE WITNESS: Ask me the question again?

Q. (By Mr. Lund) It is my understanding that the Union sought to have you change certain incentive rates which you had already changed under the terms of this new provision in the contract?

A. That's right.

133 Q. Now, Mr. Wallen, did the Union simply request a change in certain rates at this time? A. No. Well, yes, certain rates, specific rates, yes. In other words, they requested that I change the rates which fell below the 214 figure that they had come up with. That was a point, so to speak, that I raised then to the 214 level.

Q. Did they make any other propositions in this regard? A. No. This was the basic one at the outset, so to speak, when the objections were first raised.

Q. I see. Well, later on, then, Mr. Wallen, did the Union make any suggestions with regard to the wording of the contract in the area of incentive rates? A. Yes. Well, this was after the meeting when Mr. Lipsom was in town. He suggested that he draft up a letter of what they would like to have me consider for my signature, which they

felt would, more or less, clear up the situation, as they put it - the unhappiness of the men in the factory. In other words, this was the crux of the situation. He drafted up this letter for my signature and in there I think there were 3 points that he had. The basic one was Section 6d, which we had discussed, mostly. The other two were discussed very briefly.

Q. So, the Union actually sought to rewrite this section of the contract?

134 TRIAL EXAMINER: I am going to object to the question myself. The witness is testifying in regard to a particular document, if my notes are correct. He is testifying with respect to General Counsel's Exhibit No. 11 and what was sought through that document will appear on the face of it. The witness' characterization will not be helpful.

Q. (By Mr. Lund) During the time that this dispute was in existence, Mr. Wallen, had a signed, executed copy of the contract been returned to you? A. No.

Q. Had you requested that one be returned to you? A. Yes. There were at least three times when I either met, or talked to Mr. Nasser that I requested a copy of the contract.

Q. What were you told? A. At one point in this, you might call it, negotiation or re-evaluation -

MR. GARDNER: I object to the witness' characterization.

TRIAL EXAMINER: The objection is overruled. Continue.

THE WITNESS: At one point in this discussion he did indicate that the contract was being held up, or that he had notified headquarters to hold this contract up, until this point got clarified.

TRIAL EXAMINER: May I interrupt? You said that Mr. Nasser indicated something. I'm going to strike your testimony in which you said that at one point Mr. Nasser indicated and then you said some more things. Tell us now what Mr. Nasser said to you, in his exact words or in substance, if you don't remember his exact words.

135 THE WITNESS: I don't remember his exact words but, in essence, he indicated - -

TRIAL EXAMINER: I don't want that word.

THE WITNESS: Oh, you don't want the word indicated.

TRIAL EXAMINER: What did he tell you?

THE WITNESS: That the contract was being held up until we got this Section 6d straightened up.

TRIAL EXAMINER: When did this occur, this conversation you just described?

THE WITNESS: In March, February or March of 1964.

Q. (By Mr. Lund) Now, Mr. Wallen, what were the conditions at the plant at this time? A. The conditions at the plant, actually, January, February, and March, you might say is my worse time of the year as far as business is concerned. The conditions were deteriorating, it didn't really start to deteriorate badly until, I'd say, toward the end of February and March. As far as the slow-down was noticeable at that time, the griping, more or less, became louder and stronger.

Q. You refer to a slowdown. Now, when did this occur? A. If I remember correctly -- Now, this is like Mr. Nasser said, this was not an overall plantwide situation and this seemed to be a "pick a spot today" and "pick a spot tomorrow" situation. According to our records, one day it was down in the press room and one day it was the spring makers, and one day it was the spray painters, and the welders, and so forth. This, I would say, started in the first part of March.

136 Q. And, how long did this persist? A. Well, as I say it was sporadic -- three or four days here, and two or three days there -- it was not a consistent situation but it was various and sundry applications throughout the locations in the factory.

Q. Now, in March, when you requested the copy of the contract from Mr. Nasser, was this the only time that you requested the contract from Mr. Nasser - that a contract be delivered to you? A. No.

Q. Were there other times? A. Frankly, there were other times, I know there were at least three times. This one particular time I made reference to was actually in a personal meeting, for some specific reason, whether it was this reason or not, I don't remember.

Q. Was this during or after the slowdown? A. This was probably before the slowdown, as I remember.

Q. In regard to the slowdown, Mr. Wallen, did you ever have the opportunity to have a meeting with any member of the Union on this point? A. Yes.

137 Q. And, will you describe that meeting and who attended? A. I remember it was the Union Committee, Mr. Nasser was there but it wasn't called for the purpose of the slowdown particularly, as I remember, it was called on this point of rates.

Q. When was this? A. This was also in March, if I can put these things in the right period of time, but I think it was in March. We discussed the fact that it was evident that there were slowdowns. Mr. Nasser claimed that as long as the men were making their best rate, $1.43 an hour, that they could not be construed as slowing down. This was his contention, that a $1.43 an hour was a fair day's work for a fair day's pay, and, actually, under the incentive systems this can be proven by past production records and the men, themselves, these were operations where they were making $2.00 an hour minimum in a lot of cases, $1.80 an hour, and the records show that they were earning $1.50 an hour, $1.55 an hour. Where the zipper was making $2.50 an hour, he was making $1.60. Then, I didn't bring these records, but I have them in my files from the actual production records the men turned in. His contention was that it could not be construed as a slowdown because they were making over $1.43 an hour which was the base rate guaranteed and as long as they were making that, that's all I can expect of them. Well, naturally, this is ridiculous because the incentives are not to make $1.43. The purpose of incentives is to give the operator an opportunity to make more money by putting out.

138 Q. Now, who else was at this meeting? A. All the Union Officers were there and Mr. Nasser. As far as management, I would say that Mr. McDonald was there at that time, the plant manager.

Q. What were the names of the Union Officers there? A. Joseph Butler, I know Ernest Lawry, and Freddie Squire. Freddie

made most of the meetings, I'm not sure if he made this one or not.

Q. Is Mr. Lawry still working for you? A. Yes, he is.

Q. What else was discussed at this meeting in reference to the slowdown and its possible elimination? A. I don't remember anything pertinent, other than this one conversation which sort of boiled me, you might say. Outside of that, I don't think there was anything with reference to the slowdown. They just said it is not a slowdown, this is a fair day's work for a fair day's pay and this is all you can expect.

Q. Mr. Wallen, I direct your attention to the date of March 25th or possibly March 26th, 1964 and a meeting that took place on that date. Do you recall the occurrence? A. This was the day that Mr. Nasser called me in the morning and said the attorney from Pittsburgh was in town and they would like to have lunch with me.

139 Q. I see. And, what was the avowed purpose of this meeting? A. Well, I don't know that it was said at the time of the invitation. It was obvious they wanted to talk to me again about these incentive rates.

Q. And, did you attend? A. Yes, I did.

Q. And, where was that, sir? A. Well, I went to their Union Office and from there we drove to the Plantation Inn for lunch.

Q. I see. And, what did you tell -- would you name everyone who attended this meeting? A. There was Mr. Lipsom, Barney Morel, and Michael Nasser.

Q. I see. And, what was the discussion that occurred? A. At lunch, pertinent to the subject, Mr. Lipsom did most of the talking, as I remember. He couldn't understand why I was being unreasonable in pursuing the course I was. That economically there was little involved. That, according to his way of thinking, I was, more or less, by my continued insistence, more or less, upon following the contract as it was signed that I was putting the Union and the International Representatives here in New Orleans, so to speak, in a bad light with the Local. I was destroying, so to speak, their faith in their writing of this contract. In other words, he, more or less, played on me from all directions, you might say, economic and personal and I am not a hardnosed type -

140 MR. GARDNER: I object to that. He can only testify what he heard.

THE WITNESS: I'm sorry. I, more or less, listened to everything he said, you might say, I agreed with almost everything he said as far as their contentions but I could see no reason why the contract should be altered. This was as I had intended it during negotiations and this is the way that I, more or less, left it. After we left lunch we went back to their office. I guess this was about 2 or 2:30, someplace around there and more of the same discussion continued. This is when he brought up the point of "why don't you let me draft up a letter for your consideration as to what modifications to this section we would like to have you entertain." I was willing to consider them. I told them so, that I would consider them and at that point I left, about 4:30-5 o'clock, someplace around there. The next morning -- do you want me to go further?

Q. (Mr. Lund) Yes. A. The next morning I called Mr. Nasser and told him that I had, more or less, reconsidered it and I could not go along with their proposals of the previous day. Subsequent to that the letter came in with their proposals, which I never signed and never returned. But, it was the next morning when I talked to Mr. Nasser and told him that I, more or less, remained in the same position as to the provisions of the contract.

141 TRIAL EXAMINER: Off the record.

(Discussion off the record)

TRIAL EXAMINER: On the record.

Q. (By Mr. Lund) Mr. Wallen, I'm going to show you a copy of General Counsel's Exhibit No. 11, which has been introduced into evidence and ask you if you can identify that? A. Yes. This was the letter that came after this meeting, so to speak.

Q. Does that letter contain the proposals made to you by Mr. Lipsom and Mr. Nasser and Mr. Morel? A. Basically, item No. 1, in this No. 11, is what we discussed most of the time. Item No. 2 we did touch on in the discussion. I told them, well, their contention was that

the way the provision was written in the contract that I had the right to reduce the rates from $2.50 an hour to $1.44 but I assured them at that meeting, and I assured them at any time before that, that this is not my intention. I don't think I ever indicated, not intentionally, wanting this provision to be written into this new contract that we had signed. It was to equalize, to make more equitable the rate structure within the factory. When I signed my first contract with United Steelworkers I had bought the business only --

142 TRIAL EXAMINER: I think you have gone beyond.

THE WITNESS: I'm sorry. My whole purpose was to equalize the rates within the factory.

TRIAL EXAMINER: That's enough.

THE WITNESS: What point am I speaking on now?

TRIAL EXAMINER: You're not speaking, wait for his question.

Q. (By Mr. Lund) I take it that you did not sign the proposal?

TRIAL EXAMINER: So testified.

THE WITNESS: Right.

Q. (By Mr. Lund) Now, Mr. Wallen, at the time of this meeting had you yet received a signed copy of the contract, the one you referred to at the Plantation? A. No.

Q. Mr. Wallen, I direct your attention to April 23rd, 1964 and ask you if you recall the events of that day? A. This is the date that the walk-out occurred. We had discharged Mr. Porter in the morning because of slowdown and repeated notifications in the past of his slow-down and it continued to persist and he was discharged that morning. The workers, initially, sat-down, actually, within the factory and refused to

143 work and, then, about 11:30 or 12 o'clock, someplace around there, they left the building and went over to the Union Hall, I imagine for this is where I saw them at 3:30, to have a meeting. Mr. Nasser called me and asked me if I was interested in talking to the men, if I was willing to talk to the men and I said yes, I would come over and explain my position and answer any questions they may have and see if we can, more or less, straighten out this situation. And, this is

exactly what I did. I left there about 4:30 or 4:45 and the next morning the picket line was up.

Q. I see. And, did you explain your position to them at that time? A. Yes, I did.

Q. What did you tell them? A. Well, actually my position was that Porter was a discharged employee for valid reasons. They questioned mostly about the incentive rate structures and I told them my position on that and why. Their main objection, naturally, was that they were taking home less money at certain operations. Yet, the ones that were taking home more money didn't have any objections because rates were increased as well as rates decreased for this equalization.

MR. GARDNER: I object to this. It is not testimony.

TRIAL EXAMINER: Is this what you told the employees at that meeting? All right, very well.

144 THE WITNESS: Like I say most of the questioning was from those as to why the rates were reduced below 214 and as I said, I explained to them that my position had always been that I never intended to have this base rate, so to speak, within the organization, that when the rates were adjusted it was based on studies that we had taken, in some cases the production records and in some cases management's judgment in connection with other information we had had and this is how we had arrived at the rates. Like I say, there was no indication at that time as to what their reply would be or their response.

Q. (By Lund) I see but at this time, Mr. Wallen, had you received a signed copy of the contract? A. No.

Q. Was there any picketing involved with the strike? A. Yes, there was.

Q. And, when did that begin? A. In the morning--well, the next morning. I think it was the 24th, the morning of the 24th at 6 o'clock in the morning the picket lines were there and continued in force until June 19, as I recall. From 6 in the morning until 6 in the evening, most of the time.

Q. I'm going to show you 2 photographs which I have marked for identification as Respondent's Nos. 2 and 3 and I'm going to ask you if you can identify those, sir? A. Yes.

145 Q. By whom were those taken? A. I took these after the first morning when the picket line was set up.

Q. I see.

MR. LUND: At this time, Mr. Examiner, I would like to offer into evidence Respondent's Exhibits identified as Nos. 2 and 3. They are two photographs just identified by the witness.

TRIAL EXAMINER: Any objections?

MR. GARDNER: No, no objection.

TRIAL EXAMINER: Very well. The photographs are admitted in evidence as Respondent's Exhibit Nos. 2 and 3.

(Whereupon, the documents above referred to were marked Respondent's Exhibit Nos. 2 and 3 for identification, and were then received into evidence.)

Q. (By Mr. Lund) Mr. Wallen, with the exception of the meeting in the latter part of March at the Plantation Restaurant were there any other meetings between you and representatives of the Union concerning the dispute which has arisen? A. Yes. I remember meeting in Mr. Morel's office with Mr. Barney Morel and Mr. Nasser and myself and this was prior to the Plantation meeting, so to speak. This was more or less -- I think this was my first formal meeting with them. They tried to explain to me what they meant when they wrote this provision and so forth. Oh, no, we had that meeting before the strike, I'm sorry.

146 Q. When was this meeting? A. This meeting was prior to the Plantation, yes.

Q. What was discussed at this meeting? A. More or less Mr. Morel's understanding of what he intended when he wrote that section and, frankly, I told him at that time that this is what I had agreed to, what he wrote and at that time no discussion had come up about a

block, so to speak, as to where the rates would be adjusted up to or down to. The whole purpose of writing that section was more or less to give me a guide line in adjusting the rates. In other words, my argument before the contract was drawn up was well, where do I start Barney? What do you consider high rates? Here is Barney. Mr. Morel, I'm sorry. Do you consider high rates to $2.50 an hour? A $1.60 per hour rate? I mean, where do I start, more or less in analyzing this structure? And, this is where we arrived at this point. We said any rates that were earning over 150% of the base rates, at the discretion of the Company, may be changed and I agreed to this. I said, well, that's as good a starting point as any.

Q. Were there any other meetings? A. There were other conversations. I don't think there were any formal meetings, as such.

147 Q. Now, Mr. Wallen, at any of these meetings or conversations that you referred to were any proposals made to you to settle this dispute? A. You are talking about prior to the strike?

Q. Any of the meetings that we have referred to or conversations. A. Yes. Well, the only time I really got it in writing was after this meeting at the Plantation. Prior to that overtures had been made.

Q. Explain what you mean by that. A. Well, I mean -- it was back in January when it first came up, that the workers in the plant were unhappy with the new rates because they were taking home less pay, so to speak. And, then we had, as I referred to, a meeting with the Union Officers and, there was more than one, I just remember this one in particular. And, Barney had called, Mr. Butler had come into my office and many times under various guises, so to speak, and, more or less, tried to get me to agree to increasing the rates back to where they thought they should have been in the first place.

Q. I see. Now, I will direct your attention to the time after the strike had begun and ask you if you can recall any meetings after that period? A. I had no meetings with the Union Committee, as such, after the strike had started, to my knowledge. It was basically conversations with Mr. Nasser with reference to getting the men back to work.

148 Q. Did you attend a meeting at the law offices of Montgomery, Barnett, Brown, and Read? A. Oh, yes. This is actually, to my recollection, the first formal meeting where we got together, so to speak, and discussed the problem and what the solution might be.

Q. Now, Mr. Wallen, at the time -- strike that. Prior to this meeting, had you been able to rehire employees in order to operate your plant? A. Yes.

Q. After the strike began, did you, in fact, return to good operating condition? A. Yes, I would say so.

Q. Were any strikers rehired during this time? A. Yes, they were, actually.

Q. And were there new hires as well? A. Oh, yes. Prior to the strike there were strikers rehired, if you want to call working rehired.

Q. Approximately how many strikers were rehired? A. Three - four, I'm sorry.

Q. With the production obtained from these rehires were you able to meet your quotas?

MR. GARDNER: I object. I don't follow the relevance of that line of questioning.

149 TRIAL EXAMINER: Sustained.

Q. (By Mr. Lund) Approximately how many new hires were there after the strike began?

MR. GARDNER: I object.

MR. LUND: I don't see the objection for that.

TRIAL EXAMINER: Overruled.

THE WITNESS: Approximately 20, I would say, 20 to 26.

Q. (By Mr. Lund) These were new hires? A. Yes.

Q. Now, were these the state of things at the time of the meeting that we referred to in the offices of Montgomery, Barnett, Brown, and Read? A. Yes. I would say within about 10 days after the strike we started running about 20 to 26 employees.

Q. At this meeting we had referred to, Mr. Wallen, what was the Union's position so far as settlement or termination of the strike? A. Well, the Union's position was that they could not get the men back to work unless some concessions were made by the Company as an incentive, so to speak.

Q. What was the nature of these incentives? A. To adjust, basically, the incentive rates to the point where they thought they should be.

150 Q. I see. Mr. Wallen, at any time, throughout, from December of 1963 till the present have you refused to meet with the Union and discuss any disputes that might be in existence? A. No.

* * * * *

CROSS EXAMINATION

Q. (By Mr. Gardner) Mr. Wallen, your meetings with the Union during the course of this strike, were they not in order to work out something to bring the employees back to work, to put an end to the strike? A. Yes, I imagine so.

Q. In other words, it was a cooperative effort to try to bring the situation back to the status quo and send people back to work, is that correct? A. Well, they more or less made the point that they couldn't do anything else with them.

151 Q. Article VIII, Section 6, which involves simply that this was not part of the prior bargaining agreement, is that correct? A. Correct.

Q. During negotiations on this agreement, dated 1963 to 1966, how much time did the parties spend in working out details of this Section 6? A. Not too much.

Q. Not very much. Your counsel referred before, during direct examination, to General Counsel's Exhibit No. 11, which is a letter dated March 27, which was sent to you by our Mr. Nasser, regarding the meetings on the incentive rates. Is it your testimony, sir, that you did not agree with his statements in this letter? A. Right.

Q. In its entirety? A. Like I told him, I agree in principle but in principle of Sections 2 and 3, although I don't see any reason why it had to be put into the contract.

Q. You mentioned a conversation that you had with Mr. Nasser but you weren't specific as to the date of that. With regard to this section on incentives and the fact that the contract might be held up until this is straightened out, do you recall when the date of that conversation occurred? A. No, I can't.

152 Q. Prior to March 25th? A. I'm sure it was, yes.

Q. A month before that? A. I would say within 30 days prior to that. I don't think it was too close to that date, actually. Someplace around the end of February or the 1st of March.

* * * * *

153 MR. LUND: Mr. Trial Examiner, at this time Respondent would like to offer a stipulation that the General Counsel's Exhibit No. 10 received into evidence is signed by the following International Officers and that these are the only signatures thereto who are International Officers of United Steelworkers of America. These are, Mr. David J. McDonald, Mr. J. W. Abel, and Mr. Howard R. Hague. Do you join in the stipulation -- strike.

TRIAL EXAMINER: Do you join in the stipulation, Mr. Gardner?

MR. GARDNER: It is I. W. Abel.

MR. LUND: Correction. Mr. I. W. Abel instead of J. W.

MR. GARDNER: We will so stipulate.

TRIAL EXAMINER: The stipulation is accepted.

* * * * *

G. C. Exhibit No. 2

May 1, 1964

Mr. Clifford Shorts
Contract Department
United Steelworkers of America
1500 Commonwealth Building
Pittsburgh, Pennsylvania 15222

Dear Cliff:

On January 2, 1964 Staff Representative Mike Nassar sent copies of a labor agreement between our Union and the Crescent Bed Company to the Tampa office for siganture of Director Garrison, along with a request that they be sent to your office for the signatures of the International Officers.

I have checked with the District office in Tampa and have been advised that they were sent to your office on January 6th and have not yet been returned.

Would you please look into this matter for us and advise?

Sincerely and fraternally yours,

/s/ Warren V. Morel, Representative, United Steelworkers of America

WVM:mnw

cc: O. L. Garrison

Blind Copy: Nate Lipson

G. C. Exhibit No. 3

UNITED STEELWORKERS OF AMERICA
—USA—
1500 COMMONWEALTH BUILDING
* * * PITTSBURGH 22, PA. * * *

May 14, 1964

Oral L. Garrison, Director
Gulf States Organizing Area
P. O. Box 18144
Tampa, Florida, 33609

Attention: Representative Warren V. Morel

Dear Sir and Brother:

With reference to your inquiry concerning the delay of transmission of the agreement dated December 1, 1963, between the Crescent Bed Company and our Union, these agreements arrived in the Contract Department on January 9, 1964, (see copy of your letter dated January 6, 1964, enclosed herewith) the signatures of the International Officers were affixed on January 15, 1964, but the copies which should have been returned to your office were inexplicably held here in the Contract Department until a few weeks ago. We are very sorry for this delay, and if there is anything further we can do in this regard, please let us know.

Sincerely and Fraternally,

/s/ Clifford J. Shorts
Contract Department

CJS/jay

Enclosure

cc: W. J. Morel
5/15/64

[Rec'd-USWA-May 15,1963]

G. C. Exhibit No. 7

January 2, 1964

Mr. O. L. Garrison, Director
District 36G-USWA
P. O. Box 18144
Tampa, Florida 33609

Dear Sir and Brother:

I am enclosing the new agreement with Crescent Bed Company for your approval and signatures.

You will note that this contract is similar to the old with a few exceptions. The probationary period has been reduced to 30 days. A training program on some jobs has been established with a progression schedule attached. A general wage increase of .08¢ per hour each year for a period of three years.

As you will recall, this is the same company that requested relief from its contractual obligation last year. However, the plant owner, Mr. Wallen, has acknolwedged that the financial situation improved some during the last year.

There was some difficulty in reaching agreement and we did use the services of the Federal Mediation & Conciliation office.

The local union is very pleased with this agreement, and we are convinced that under the circumstances it was impossible to get any more.

Sincerely and fraternally,

/s/ Michael R. Nassar, Representative, United Steelworkers of America

MRN:mnw
enc. (10)

G. C. Exhibit No. 8

UNITED STEELWORKERS OF AMERICA
—USA—
4302 HENDERSON BOULEVARD
* * * TAMPA 9, FLORIDA * * *

January 6, 1964

Mr. Michael Nassar,
Staff Rep. - USA
Room 316 - 3308 Tulane Avenue
New Orleans, Louisiana

Dear Mike:

I have your letter of January 2nd enclosing copies of the new agreement with Crescent Bed Company. In view of the situation with this company last year, I think you have done a very fine job in negotiating the new contract and extend my congratulations. I am signing and sending it to Pittsburgh for approval today.

Best wishes.

Fraternally,

/s/ Oral
O. L. GARRISON,
Director

OLG:ml

G. C. Exhibit No. 10

EXCERPTS FROM
AGREEMENT
Between
CRESCENT BED COMPANY
and
UNITED STEELWORKERS OF AMERICA
LOCAL UNION 3551

PREAMBLE

This Agreement dated December 1, 1963 is entered into between Crescent Bed Company, New Orleans, Louisiana (hereinafter referred to as the Company) and the United Steelworkers of America (hereinafter referred to as the Union).

ARTICLE I — UNION SECURITY

Section 1. All employees covered by this agreement who are members of the union on the effective date of this agreement must as a condition of employment maintain their membership in the union for the life of this agreement.

Section 2. Any employee who is not a member of the union and any employee who is hired on or after the effective date of this agreement, must, as a condition of employment, join the union on the effective date of this agreement or the 30th day following the beginning of his employment whichever is the later, and must maintain his membership in the union for the life of this agreement to the extent of paying the periodic dues and initiation fees uniformly required of all union members.

ARTICLE II — CHECK-OFF

Section 1. The employer agrees to deduct each month from the wages of its employees who belong to the union and who individually and voluntarily certify in writing that they authorize and request such deductions, present initiation fees and union dues.

Section 2. The initiation fees and dues shall be deducted by the employer on the first pay period of each month and submitted by check to the Secretary-Treasurer of the union as determined in accordance with the provisions of the Constitution of the International Union.

Section 3. The authorization shall remain in effect until revoked by the employee, but shall be irrevokable until termination of employment or until this agreement is terminated whichever is earlier.

Section 4. The union shall indemnify and save the company harmless against any and all claims, demands, suits or other forms of liability that shall arise out of or by reason of action taken or not taken by the company in reliance upon the written authorization furnished to the company by the union under the provisions of this article.

Section 5. It is understood that the company's agreement is limited to authorized deductions from the employee's pay and that the company is not liable for the dues of any employee who ceases to be due any pay.

ARTICLE III — MANAGEMENT CLAUSE

Section 1. Nothing in this agreement shall be deemed to limit the company in the exercise of the legal and customary functions of management which are recognized as the company's exclusive responsibility including but not limited to the right to plan, direct, and control operations, to hire, to promote, to demote, and for proper cause to discipline, suspend or discharge, to assign work and transfer employees from one job to another and to relieve employees for lack of work or other legitimate reasons, provided, however, that in the exercise of such rights, the company shall observe the provisions of this agreement. Any employee who feels that the provisions of this agreement have not been observed because of any company action, has recourse, to the Grievance Procedure set forth in this agreement.

* * * * *

ARTICLE VI – HOURS OF WORK AND OVERTIME

Section 1. Employees shall normally work five (5) days a week, Monday through Friday, but may be required to work more than five (5) days, provided that hours worked in excess of eight (8) hours within any 24 hour period, or hours worked in excess of forty (40) hours in the work week shall be paid for at the rate of time and one-half (1 1/2) the regular rate of pay. Overtime or premium payments shall not be paid twice for the same hours worked, either at the straight time rate or at the overtime rate. If two or more overtime rates apply, only the higher rate shall be paid.

Section 2. Rest periods of ten (10) minutes each, on company time, shall be provided twice during each period of continuous work of an employee of at least eight (8) hours, and within each such period a lunch period of one-half (1/2) hours without pay will be allowed.

Section 3. The work week, for purposes of this contract shall commence at the beginning of the shift nearest to Monday at 12:01 a.m. and shall continue for the succeeding seven (7) days.

Section 4. Employees required by the company to visit the office of a doctor or hospital for treatment or examination, except in the case of persons applying for employment or seeking to qualify for Workmen's Compensation, shall be paid for time thus lost not exceeding four (4) hours.

Section 5. Overtime work shall be divided as equally as possible among employees who regularly perform the work to be done, provided this can be done without undue effect upon the efficient operation of the plant.

Section 6. Employees shall be paid time and a half (1 1/2) for work on Saturdays and double time for work on Sundays, subject to the same rule stated above with respect to a duplication of pay.

* * * * *

ARTICLE VIII – WAGES

* * * * *

Section 6. The company, at its discretion, may establish new incentives to cover:

a. new jobs which may be established,

b. jobs not presently covered by incentive application,

c. jobs covered by an existing incentive plan where, during a current sixty (60) day period, the straight time average hourly earnings of employees under the plan are equal to or less than the average of the standard hourly (day rates) rates for such employees,

d. jobs covered by an existing incentive plan where, during a current sixty (60) day period, the employees under the plan are shown to be earning in excess of fifty (50) percent of the average standard hourly (day rate) rate of such employees,

e. jobs under which the standards change as a result of mechanical improvements, change in equipment, manufacturing processes or methods, materials processed, or quality or manufacturing standards. And where such new or changed conditions are of such magnitude that replacement of the incentive is required.

ARTICLE IX – HOLIDAYS

Section 1. The following days shall be considered as holidays:

July 4th	New Year's Day
Labor Day	Mardi Gras Day
Christmas Day	Thanksgiving Day

Section 2. Starting December 1, 1963 an employee shall be paid eight (8) times his regular straight time hourly rate for each of the above listed holidays when unworked, provided:

a. such employee is on the active role of the company,

b. such employee is on forced layoff within a period of two (2) weeks prior to a holiday,

c. such employee works his last scheduled work day before the holiday and his next scheduled work day following the holiday (except as permission may be granted for absences on such days.)

Section 3.

a. Holidays worked shall be paid at a double time rate.

b. Any employee scheduled to work on a holiday and failing to report as scheduled shall not be paid for the holiday unworked. (Except in cases of sickness or cases of death in the immediate family.)

Section 4. If a holiday falls within the vacation period of an employee such an employee shall receive the holiday pay in addition to the vacation pay.

ARTICLE X – VACATIONS WITH PAY

Section 1. All employees covered by this agreement who have been in the service of the employer for one (1) year or 1200 hours shall be entitled to one (1) week's vacation with pay, said vacation pay to be based upon forty (40) hours at the employee's regular hourly rate.

Section 2. All employees covered by this Agreement who have been in the service of the employer for three (3) years or more shall be entitled to two (2) weeks' vacation with pay, said two weeks' pay to be based upon eighty (80) hours at the employee's regular hourly rate.

ARTICLE XI – GRIEVANCE PROCEDURE

Section 1. The purpose of this article is to provide an opportunity for discussion of any request or complaint and to establish a procedure for the processing and settling of grievances.

* * * * *

ARTICLE XIII – NO STRIKE, NO LOCKOUT

The union agrees that there will be no strikes of any type for any cause during the life of this agreement.

The company agrees that there will be no lockout.

If during the life of this agreement, any employees engage in any strike of any kind, stoppages of work or slowdowns, the International Officers, Local Officers and paid representatives of the union will cooperate with the company in ending such occurrences and returning the employees to work.

It is understood and agreed that in the event of any strikes of any kind, stoppages of work or slowdowns on the part of any employees during the life of this agreement, there will be no liability on the part of the International Union, Local union or any of their officers, representatives or members. Employees who engage in any of these acts may be discharged or disciplined by the company but shall have recourse to the Grievance Procedure provided for in Article XI of this agreement.

ARTICLE XIV – INSURANCE

The Insurance Program now in effect at Crescent Bed Company shall remain in effect until the termination date of this agreement.

ARTICLE XV – TERM OF THIS AGREEMENT

Section 1. This agreement shall become effective as of December 1, 1963 and shall remain in effect until and including November 30, 1966.

Section 2. All benefits as outlined in this agreement shall become effective December 1, 1963 and remain in effect until the expiration date of this agreement, November 30, 1966.

Section 3. Either party may request the negotiations of a new agreement by giving written notice to the other party not less than sixty (60) calendar days before November 30, 1966.

This agreement signed this 1st day of December, 1963.

UNITED STEELWORKERS OF AMERICA

/s/ David J. McDonald
/s/ I. W. Abel
/s/ Howard K. Hague
/s/ O. L. Garrison
/s/ Michael Nassar
/s/ Joseph Butler
/s/
/s/ Ernest Lawry

CRESCENT BED COMPANY

/s/ Erwin H. Wallen

G. C. Exhibit No. 11

UNITED STEELWORKERS OF AMERICA
AFL-CIO
GULF STATES ORGANIZING AREA — DISTRICT 36-G
* * * 316 TULANE BUILDING 3308 TULANE AVENUE * * *
NEW ORLEANS 19, LA.

March 27, 1964

Mr. Erwin H. Wallen
Crescent Bed Company Inc.
P.O. Box 13412
New Orleans, Louisiana 70125

Dear Mr. Wallen:

I am writing in order to state the understanding of the parties as to the application of Article VIII, Section 6(d) of the Collective Bargaining Agreement, dated December 1, 1963.

1. As to any job as defined by Article VIII, Section 6(d) which is re-evaluated and for which the company does establish a new incentive, such new incentive shall be set to yield earnings of at least fifty (50) percent of the standard hourly rate.

2. Any job for which earnings were below (50) percent of the standard hourly rate during the 60 days preceding the execution of the agreement is not covered by Article VIII, Section 6(d) and a new incentive may not be henceforth established for such job; except by mutual agreement.

3. As to any job which is re-evaluated as set forth in Article VIII, Section 6(d) and as explained in this letter, the incentive may not be changed subsequently, regardless of future earnings, except by mutual agreements.

If the fore-going meets with your understanding, kindly confirm same by signing below.

Yours truly,

/s/ Michael Nassar Rep.
United Steelworkers of America

_____
Erwin H. Wallen

G. C. Exhibit No. 12

CRESCENT BED COMPANY, INC.

Institutional, Hospital, and Household Metal Beds and Springs

600 S. BROAD ST. P.O. BOX 13412, NEW ORLEANS 25, LA. * * *

April 15, 1964

Mr. Michael Nassar, Rep.
United Steelworkers of America
316 Tulane Building
3308 Tulane Avenue
New Orleans, Louisiana

Dear Mike:

With reference to your letter of March 27th, 1964 requesting approval of your understanding of Article VIII, Section 6(d) of the Union Contract dated December 1st, 1963, I cannot go along with your understanding of this Article as previously discussed, it was never our intention to guarantee a worker $2.14 an hour based on past productive records when in reviewing the work content and job classification involved, this was in excess of the expected earnings.

As indicated in our conversation in substance I agree with Paragraph 2 and 3, however would not in anyway set this forth in writing so I would be rigidly tied down to live with any further developments which may prove detrimental to the organization and management of the company.

Based on my above views, I could not agree to the understanding you have set forth in this letter.

Sincerely yours,

CRESCENT BED COMPANY, INC.

/s/ Erwin H. Wallen
President

EHW/cl

G. C. Exhibit No. 13

TELEGRAM April 24, 1964 2:30 P.M.

E. H. Wallen
Crescent Bed Company, Inc.
600 S. Broad Street
New Orleans, La.

Work stoppage at Crescent Bed Company unauthorized by United Steelworkers of America have requested local union return to work immediately.

Michael Nassar, Representative
United Steelworkers of America

G. C. Exhibit No. 15

GRIEVANCE REPORT #9-64

USA Local Union No. 3551

Location Crescent Bed Company
New Orleans, La.

Name Walter Porter #27 **Union Legder No.**____ **Age**____

Address _____

Department _____ **Operation** _____ **Check No.** _____

Service Spring

Nature of Grievance On Thursday, April 23, 1964, Walter Porter was discharged because the company charges him with a deliberate and intentional slowdown of work even though he worked at an incentive pace and earned in excess of the guaranteed rate for the job he was assigned to.

The Union charges the company with violating Article III, Section 1, and request pay for all time lost as a result of the company's action and the reprimand be striken from this employee's record.

/s/ Joe Butler, Pres.

COPY FOR LOCAL UNION

G. C. Exhibit No. 16

Law Offices
MONTGOMERY, BARNETT, BROWN & READ
804-811 National Bank of Commerce Building
* * * NEW ORLEANS, LA. 70112

May 4, 1964

Mr. Michael R. Nassar, Representative
UNITED STEELWORKERS OF AMERICA, AFL-CIO
316 Tulane Building
3308 Tulane Avenue
New Orleans, La. 70119

Re: CRESCENT BED COMPANY, INC.

Dear Sir:

Mr. Wallen of Crescent Bed Company has handed us certain papers received from the American Arbitration Association pertaining to certain alleged grievances which have arisen in the Crescent Bed Company.

We are advised by Mr. Wallen that the contract dated December 1, 1963 has never been signed by the representatives of the union, nor has a completed copy been returned to the company.

We are advised further that the employees are presently on strike, although Article XIII of the contract contains a no-strike clause and further requires the international officers and local officers to co-operate with the company in terminating any occurrence in violation of the no-strike clause.

Before we are able to advise Crescent Bed Company as to what further procedure should be taken in connection with the alleged grievances, we would want to know what position the international union takes with reference to the contract and what position the local takes with reference to the contract. If the international and the local are in disagreement as to whether there is or is not a contract, we would want to be advised of that fact. On the other hand, if the international and the local agree that there is a contract, we would appreciate your explanation as to why a signed copy has not been furnished to the company.

Please be assured that the company will let you have its position promptly when we have your reply to this letter.

Yours very truly,

/s/ Henry J. Read

cc: Crescent Bed Company, Inc.

Mr. Helmut O. Wolff, Regional Manager, American Arbitration Association, 820 Praetorian Building, 1607 Main Street, Dallas, Texas 75201

G. C. Exhibit No. 17

May 8, 1964

Mr. Henry J. Read
Montgomery, Barnette, Brown & Read
804 National Bank of Commerce Building
New Orleans, Louisiana 70112

Re: Crescent Bed Company, Inc.

Dear Sir:

This is to acknowledge receipt of your letter of May 4, 1964 in which you request a copy of the labor agreement between Crescent Bed Company, Inc. and the United Steelworkers of America.

Please be advised that I have delivered today a copy of this agreement which bears the signatures of representatives of both parties to Mr. Wallen.

We are sorry that there was a delay in the processing of this agreement.

Very truly yours,

/s/ Michael R. Nassar, Representative, United Steelworkers of America

MRN:mnw

G. C. Exhibit No. 18

CRESCENT BED COMPANY, INC.

Institutional, Hospital, and Household Metal Beds and Springs

600 S. BROAD ST. P.O. BOX 13412, NEW ORLEANS 25, LA. * * *

May 12, 1964

Certified Mail
#038533

United Steelworkers of America
Mr. Michael R. Nassar, Representative
3308 Tulane Avenue
Tulane Building
New Orleans, Louisiana

Dear Mr. Nassar:

You have recently returned to the company an agreement which was signed by the company in December of 1963. Since the date on which the company signed this agreement, you have refused to return it to us in spite of our repeated requests and have attempted to continue negotiating with reference to the rates of pay in effect in the plant. In other words, it has been your position that the agreement which was signed by the company in December of 1963 was not a complete and effective statement of results of the negotiations carried on by the parties.

As you know, on the 23rd day of April, 1964, the employees in the plant struck and have been on strike ever since. The striking employees include the officers of the local who were party to the negotiations. From this strike action and the insistence on continued negotiations, the company must conclude that there has been no contract in effect between the parties, since Article XIII of the draft which was discussed during the negotiations and which was signed by the company in good faith in December of 1963 clearly provides that there shall be no strike during the life of that agreement. The action of the union in striking the company, coupled with the refusal to return a signed copy of the signed agreement -- all considered against the background of the union's attempt to conduct further negotiations pertaining to the rates in effect in the plant since December -- lead the company to the inevitable conclusion that there is at this time no contract in effect between the company and the union.

At all times since December 1963, the union has taken the position that it was free to continue the negotiation of rates. This position is completely inconsistent with the existence of a final and complete agreement between the parties. Your signing and returning a copy of the contract some three weeks after the beginning of the strike cannot create an effective contract where none existed prior to the strike.

Please be advised of our willingness to discuss any phase of this matter at such early date and time as is mutually convenient.

Yours very truly,

CRESCENT BED COMPANY, INC.

/s/ Erwin H. Wallen
President

EHW/cl

cc: Mr. Joseph Butler
President - Local #3551
United Steel Workers of America

Excerpts From
G. C. Exhibit No. 19

May 15, 1964

Mr. Erwin H. Wallen, President
Crescent Bed Company, Inc.
600 S. Broad Street
New Orleans, Louisiana 70025

Dear Mr. Wallen:

I am in receipt of your certified letter of May 12, 1964 in which you made several fallacious statements and arrived at some erroneous conclusions.

Upon signing the Labor Agreement in December, you were advised that our usual procedure was to forward the document to the District Director for signature and he in turn would forward it to the International Union office in Pittsburgh, Pennsylvania for signatures of the International officers. That procedure has been followed, albeit somewhat delayed in the processing.

* * * * *

As you well know, we have had many discussions concerning the interpretation of Article VIII, section 6(d) which is the basic cause of the unauthorized work stoppage now prevailing. * * *

As further evidence that the contract was considered by both of us to be an effective document, on April 24, 1964 you requested that I advise you by telegram as to what the International Union's position was in regard to the work stoppage. Said telegram stated that the action taken by your employees was definitely unauthorized by the International Union. The local union was advised by me that their action was in violation of the agreement and they were instructed to return to work.

We further followed this action on the same date by a telegram sent to the Local Union President, J. Butler, by the Assistant Director Richard Davidson of Florida, who again advised the local union officers that they were in violation of the Labor Agreement and ordered them to return to work immediately.

Please be advised that I am willing to meet with you at any time to discuss the present problem or any other problem concerning the collective bargaining agreement. * * *

Very truly yours,

/s/ Michael R. Nassar,
Representative, United
Steelworkers of America

* * *

RECEIPT FOR CERTIFIED MAIL — 20¢

NO. 044906

Sent To
Erwin H. Wallen, Pres.

Street And No.
Crescent Bed Co.
600 S. Broad St.

City And State
New Orleans, La.
70025

If you want a return receipt, check which
10¢ shows
/X/ to whom and
when delivered

Postmark or date

* * * * * * * * *

G. C. Exhibit No. 20

CRESCENT BED COMPANY, INC.

Institutional, Hospital, and Household Metal Beds and Springs

600 S. BROAD ST. P.O. BOX 13412, NEW ORLEANS 25, LA. * * *

May 18, 1964

Mr. Michael R. Nassar
Representative
United Steelworkers of America
316 Tulane Building
3308 Tulane Avenue
New Orleans 19, Louisiana

Dear Mr. Nassar:

I have your letter of May 15th, 1964 which I have read over very carefully.

Please be assured of our willingness to meet with you at any time to discuss any and all matters pertaining to our present problem.

I suggest that much more progress can be made to the solutions if it could be arranged for you and the company with their respective attorneys to meet at an early date and time which is mutually convenient.

Please let me hear from you so we may set up this meeting.

Sincerely yours,
CRESCENT BED COMPANY, INC.

/s/ Erwin H. Wallen
President

EHW/cl

Excerpts From
G. C. Exhibit No. 21

June 9, 1964

Mr. Henry J. Read
Montgomery, Barnett, Brown & Read
804 National Bank of Commerce Building
New Orleans, Louisiana 70112

Dear Mr. Read:

Re: Crescent Bed Company

This is to acknowledge receipt of your letter of May 25, 1964.

We regret that our suggestion toward the settlement of the unauthorized strike action was unacceptable to you.

* * * * *

Very truly yours,

/s/ Michael R. Nassar,
Representative, United
Steel Workers of America

MRN:mnw

cc: Mr. Erwin Wallen

G. C. Exhibit No. 22

Law Offices
MONTGOMERY, BARNETT, BROWN & READ
804-811 National Bank of Commerce Building
* * * NEW ORLEANS, LA. 70112

May 25, 1964

Mr. Michael Nassar
United Steelworkers of America
316 Tulane Building
3308 Tulane Avenue
New Orleans, Louisiana 70119

Re: CRESCENT BED COMPANY

Dear Mr. Nassar:

This will refer to the meeting in our offices attended by Mr. Lipsom, Mr. Morel and yourself on Friday afternoon, May 22, during which you advised us, as the representative of Crescent Bed Company, that the International union was not in a position to prevail upon the strikers to return to work unless the company agrees to modify its current right to make adjustments in the incentive rates.

After the meeting, we discussed the entire situation with Mr. Wallen in detail and the company has concluded that it is unwilling to make any change in its right to adjust incentive rates in order to have the International union exert whatever influence it now has toward the termination of the strike.

At the meeting I got the impression that Mr. Lipsom and yourself did not think that there was any possibility of settling the present differences between the company and the union unless the company agreed to your request regarding incentive rates. However, if you or Mr. Lipsom feel that there is any purpose in discussing this matter further, I will be pleased to meet with you at our early mutual convenience.

Yours very truly,

/s/ Henry J. Read

cc: Mr. Erwin H. Wallen

G. C. Exhibit No. 29

CRESCENT BED COMPANY, INC.
NEW ORLEANS, LOUISIANA

September 1, 1964

TO ALL EMPLOYEES:

SUBJECT: COMPANY POLICY

This is to inform all employees of company policy on the following matters:

VACATION:

All employees are entitled to 1 weeks paid vacation after 1 year of employment beginning and ending with the individual employee's hiring date. They will be eligible for this vacation anytime after such date, but it will be given at an opportune time for the company, which will cooperate with the employee's wishes wherever possible. After an employee has been in this company's employ for three years he shall be entitled to two weeks paid vacation. Vacation pay will be 40 hours pay at regular hourly rate per week of vacation.

OVERTIME:

Overtime shall be paid at the rate of 1 1/2 times the regular hourly rate or 1 1/2 times the incentive rate, whichever is the higher. Overtime will be paid only after 8 hours per day, and after a total of 40 hours of straight time has been worked in one week.

HOLIDAYS:

The following days are considered paid holidays when same occur on week days, and applies to employees on the active roll of the company 30 days prior to the holiday:

July 4th
Labor Day
New Years Day
Mardi Gras Day
Christmas Day
Thanksgiving Day

These holidays will be observed by the company and every effort will be made to close the plant on those days. Employees will be paid 8 hours of the individual regular hourly rate for these holidays when not worked, provided the employee has worked the day before and the day after the holiday. If there should be a necessity to work on a paid holiday, then those working shall be paid at a rate of 2 times the regular or incentive rate, whichever is the higher. Those employees scheduled to work and who do not work shall receive no holiday pay.

INSURANCE:

As stated in a previous notice, the company has a hospitalization and a life and accident insurance program and will contribute to this plan to the extent of 1/2 of the cost. The employee MUST make an application for this coverage as it is strictly voluntary. This application should be made during the period of 30 - 60 days after the original hiring date. Application blanks are available in the office. See your foreman for instructions.

CRESCENT BED COMPANY, INC.

/s/ E. H. Wallen
President

Respondent's Exhibit No. 1

EXCERPTS FROM

AGREEMENT

Between

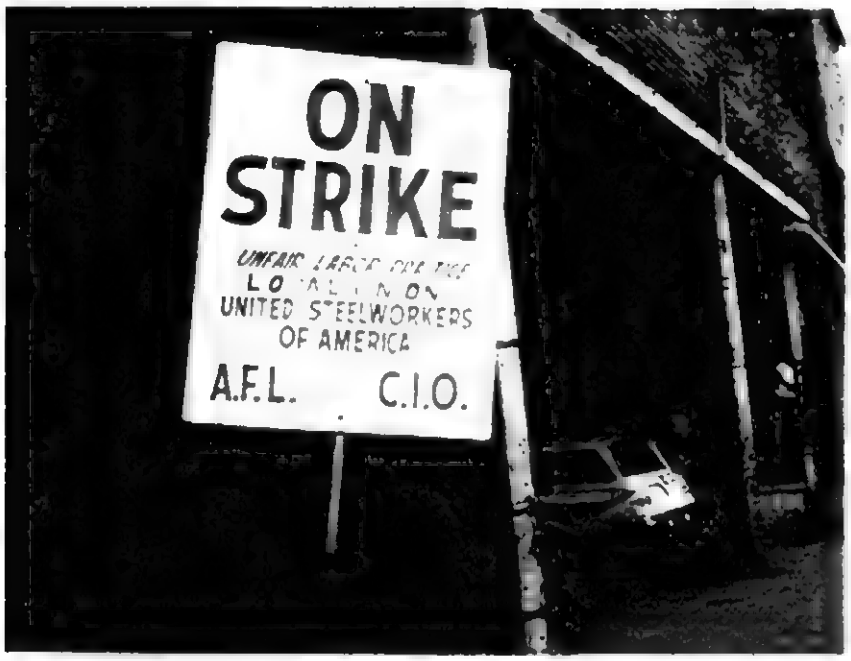
CRESCENT BED COMPANY
and
UNITED STEELWORKERS OF AMERICA
LOCAL UNION 3551

* * * * *

This agreement signed this 1st day of December, 1963.

UNITED STEELWORKERS OF AMERICA	CRESCENT BED COMPANY

RESPONDENT'S EXHIBIT NO. 2



RESPONDENT'S EXHIBIT NO. 3

TRIAL EXAMINER'S DECISION

Statement of the Case

Upon a charge filed on June 18, 1964, by United Steelworkers of America, herein called the Union, a complaint dated August 7, 1964, was duly issued alleging that the Respondent, The Crescent Bed Company, Inc., herein called the Company, has engaged, and is engaging, in unfair labor practices within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the National Labor Relations Act, as amended, herein called the Act. The complaint, as amended at the hearing, in substance, alleges that about December 1, 1963, the Company and the Union reached a final and complete collective bargaining agreement and since May 12, 1964, the Company has refused to give effect to the provisions of said agreement and otherwise has refused to bargain collectively with the Union as the exclusive representative of the employees in a unit appropriate for such purposes. The Respondent duly filed an answer to the complaint herein which, as amended at the hearing, generally denies that it has engaged in the alleged unfair labor practices and affirmatively avers that no collective bargaining agreement had been reached with the Union as alleged in the complaint and, in the alternative, that any such agreement has been rescinded because of flagrant violations of its provisions by the Union and its elected officials and representatives. A hearing in this proceeding was held before the undersigned at New Orleans, Louisiana, on October 8, 1964. Thereafter, briefs were duly filed by General Counsel, Respondent and the Charging Party.

Upon the entire record in this case and from my observation of the witnesses, I make the following:

Findings of Fact

I. The business of the Company

Respondent, a Louisiana corporation, is engaged in the manufacture of metal beds at its plant in New Orleans, Louisiana. During the

past 12 months, which period is representative of Respondent's operations, in the course and conduct of its business, the Company purchased raw materials, valued at in excess of $50,000, which were shipped directly to its plant in the State of Louisiana from points outside the State of Louisiana. Respondent admits, and I find, that the Company is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. The labor organization involved

The Union is a labor organization as defined in Section 2(5) of the Act.

III. The unfair labor practices

A. Sequence of events

On October 2, 1961, the Union was certified as the exclusive collective bargaining representative of the employees in the following unit:

> All production and maintenance employees employed at Respondent's New Orleans, Louisiana, plant, including truck-drivers, excluding office clerical employees, guards and supervisors as defined in the Act.

Thereafter, a written contract, dated December 15, 1961, was executed by the Company and the Union which was effective from September 15, 1961, to November 30, 1963. (Said agreement is hereinafter referred to as the "1961 Contract.")

Following negotiations which were begun soon after August 30, 1963, an understanding with respect to an agreement to succeed the 1961 Contract was reached on November 30, 1963, effective as of December 1, 1963. (Said oral understanding hereinafter is referred to as the "1963 Understanding.") The Company was represented at the negotiations by its president, Erwin H. Wallen, and the Union was represented by its staff representative, Michael R. Nassar, and a three man local

union committee.[1] The Company immediately put into effect the wage increases and other employee benefits called for by the 1963 Understanding. Thereafter, Nassar prepared a typewritten draft of the Understanding which, on December 16, 1963, was signed by Wallen on behalf of the Company and by Nassar and the three members of the local union committee.[2] (The written instrument hereinafter is referred to as the "December 1963 Instrument.") Nassar took with him all the signed copies of the Instrument and advised Wallen that they will be sent to the appropriate offices of the Union for signature. Nassar also told Wallen that as soon as the Instruments were processed and signed by the Union an executed copy would be sent to him.[3]

Nassar forwarded the December 1963 Instrument to the Union's district director on January 2, 1964, together with a letter of transmittal requesting his approval and signature. On January 6, 1964, the

---

[1] The three members of the committee were officers of Local Union 3551 of United Steelworkers of America. Although not entirely clear from the record, it appears that the membership of the Local was limited to employees of the Company. No evidence was offered by General Counsel concerning the authority, if any, of the three members of the Committee. As the relevant agreements in this case were between the Company and the United Steelworkers of America, it must be assumed, absent evidence to the contrary, that the members of the local union committee had no independent authority to bind the Union to any agreement with the Company. See Trial Examiner's Decision in Big Run Coal & Clay Company, Case No. 9-CA-3225.

[2] Although Wallen did not name Nassar as one of the persons who signed the December 1963 Instrument on December 16, he did not contradict Nassar's testimony that Nassar signed the Instrument on that day. Furthermore, a copy of the Instrument introduced in evidence at the hearing bears Nassar's signature. Accordingly, I find no basis to the contention made in Respondent's brief that Nassar did not sign the Instrument.

[3] A similar procedure had been followed with respect to the 1961 Contract. In that instance, after the Company had signed the agreement, it was forwarded to the Union's district director and international officers for their signatures. An executed copy was returned to the Company a couple of months later.

district director advised Nassar that he had signed the Instrument and was sending it to Pittsburg for the approval of the international officers. It was not until May 8, 1964, that a fully executed copy of the December 1963 Instrument was delivered to the Company. This delay is significant because of the events which occurred between early January and May 1964.

A threshold question in this case concerns the authority of Nassar to bind the Union. No evidence was offered at the hearing as to the authority which had been specifically delegated to Nassar by the Union. However, the Union's constitution contains the following provision:

> The International Union shall be the contracting party in all collective bargaining agreements and all such agreements shall be signed by International Officers.

Nassar, who has held the position of staff representative for the Union for approximately 8 years, when asked whether he had full and final authority to bind the Union, at first, testified disingenuously, "As far as I am concerned, yes. I have never had an agreement returned on me that I signed." However, when pressed on cross-examination, Nassar further testified that he did not know whether his signature on a contract, without more, was effective to bind the Union to all its terms and provisions. The Union's general procedure with regard to the execution of collective bargaining agreements was explained by Warren V. Morel, who has been a staff representative of the Union for 21 years. According to Morel, the general procedure is for the staff representative to forward the agreement to the district director for signature (in this case the district director's office was located at Tampa, Florida). The district director, in turn, transmits it to the Pittsburg office of the Union for processing through the contract department and for the signatures of the international officers. The executed agreement is then returned to the staff representative in the subdistrict office via the district director. The record in this case indicates that the Union follows the described procedure, not merely to perform some routine clerical

functions, but in order to permit the district director and the international officers to review collective bargaining agreements before they become finally effective. Thus, with respect to the December 1963 Instrument which Nassar submitted it to district director O. L. Garrison for his "approval and signature," the latter wrote to Nassar advising that he was "sending it to Pittsburg for approval" and complimenting Nassar upon "a very fine job in negotiating the new contract" in view of the situation of the Company last year.

In its brief, the Union, while avoiding any discussion of Nassar's authority, takes a surprising position concerning agreements negotiated by its staff representatives. According to the Union, "companies negotiating collective bargaining agreements with the Steelworkers know, on the one hand, that the collective bargaining agreement will not be effective for its entire term unless approved and signed by the International Officers. On the other hand, they expect, and indeed insist, that there will be a binding agreement as of the effective date of the agreement. As a result, the parties intend two consequences when they negotiate an agreement and those present approve it (as the parties did here on November 30 and December 16): (1) that there is immediately an agreement binding on both parties; (2) that that agreement will continue in effect until acted upon by the International Officers, and, if approved and signed by them, will continue for its entire term. If the International Officers should disapprove the agreement, then the agreement though it will have been effective and binding on both parties until such time, will, at the moment of its disapproval cease to be binding on either party." According to the Union's argument, the Company was bound by the terms of the December 1963 Instrument while the Union reserved to itself an unlimited amount of time within which to reassess its bargain and to reject its tentative commitments should the Union determine that it would be to its advantage to reopen negotiations. Such arrangement, so lacking in mutuality of obligation, would not promote the kind of stability in collective bargaining relationships which Congress

intended to achieve under the aegis of the Act. Thus, while for reasons explicated below I find, in agreement with the Union, that as of December 1, 1963, both the Union and Company were bound by a contractual relationship, I disagree that the contract would cease to be effective the moment the international officers should disapprove it. Once a collective bargaining agreement has been entered into, whether oral or written, except under unusual circumstances, it may not be terminated without observing the procedures of Section 8(d) of the Act.

The 1963 Understanding permitted the Company to establish or to change in incentive rates in defined cases. About January 10, 1964, acting in pursuance of this right, the Company effected adjustments of various rates. Within 2 weeks thereafter Wallen began to receive complaints that the adjustments did not comply with the intent of the 1963 Understanding.[4/] Despite a number of discussions about the matter which were held between Wallen and union representatives on and prior to March 25, 1964, the parties were unable to arrive at a mutually satisfactory resolution of their differences.[5/]

[4/] Despite some ambiguity in the record concerning the precise nature of the dispute, it appears to have been concerned with the fact that the Company was authorized to reduce rates for incentive jobs which were earning in excess of 50 percent of the average standard hourly rate. In making these adjustments the Company reduced the rates to a figure it considered to be equitable, whereas the employees' position was either that the rate for such jobs could be reduced only to a figure which would produce not less than 50 percent of the average standard hourly rate or that the rate could not be reduced if it would adversely affect the employees' take-home earnings.

[5/] Respondent contends that the Union was seeking to change the 1963 Understanding, while the Union contends that the dispute was limited to what the proper interpretation of their understanding should be. It is unnecessary to resolve this question, and there is insufficient evidence in the record upon which to do so. Regardless of whether the Union was seeking to obtain a change in the 1963 Understanding or merely was asking for the Company's concurrence to its interpretation of the Understanding, contrary to the Respondent, the dispute, and the Union's position in respect thereto, does not reflect an effort on the part of the Union to repudiate the Understanding.

Wallen testified that at least three times prior to March 25, 1964, he asked Nassar for an executed copy of the December 1963 Instrument and on one of these occasions, either in late February or early March, Nassar replied, "that the contract was being held up until he got this Section 6(d) straightened up," referring to the incentive rate dispute. Nassar did not specifically deny that he had made the statement attributed to him. However, Nassar testified as follows:

> Q. (By Mr. Lund) All right. Mr. Nassar, had Mr. Wallen made inquiries of you as to the whereabouts of this contract prior to this time?
>
> A. No, not in a sense. We talked about it coming down and there didn't seem to be anything too important about receiving a true copy. We were working under an agreement and that sufficed.
>
> Q. Did Mr. Wallen ever request you to send him a copy of the contract?
>
> A. Not as I recall.

To the extent that the foregoing testimony by Nassar tends to contradict Wallen's testimony, I credit Wallen. Wallen, who was eagerly sincere in his manner at the hearing, impressed me as having described the events about which he was questioned precisely as he remembered them. On the other hand, I was not equally impressed with the demeanor of Nassar as a witness in this proceeding. Nassar was unnecessarily argumentative and gave the impression that he was trying to fit his testimony into the mold of the Union's case.

In March 1964, Wallen complained to Nassar about sporadic instances of slowdown in the plant. Although Nassar argued with Wallen that no slowdown was taking place, in reply to a letter from Wallen, Nassar advised that "the slowdown was not authorized by the International Union." On April 23, 1964, the employees went on strike, despite a no-strike provision in the 1963 Understanding. The strike was not authorized by the Union. Contrary to the contentions of the

Respondent, I find that the Union's attempts to induce the employees to return to work and its repudiation of the strike were genuine.[6/] The picketing nevertheless continued until June 16, 1964.

After the strike began, the Company commenced hiring replacements for the striking employees and within 10 days there were between 20 and 26 persons at work, including 3 or 4 employees who had abandoned the strike and, according to Wallen, the operating conditions at the plant were good.[7/] Although Respondent's position is that at some point after the strike began the Union lost its majority, it did not, prior to the commencement of this proceeding, advise the Union that it questioned the Union's status as the representative of its employees.

On May 4, 1964, Henry J. Read, an attorney, wrote to Nassar on behalf of the Company. In pertinent part, his letter reads as follows:

> We are advised by Mr. Wallen that the contract dated December 1, 1963 has never been signed by the representatives of the union, nor has a completed copy been returned to the company.
>
> We are advised further that the employees are presently on strike, although Article XIII of the contract contains a no-strike clause and further requires the international officers and local officers to cooperate with the company in terminating any occurrence in violation of the no-strike clause.

[6/] I find that neither of the following impugns the good faith of the Union in its repudiation of the strike and its efforts to bring it to an end: the fact that pickets carried placards advertising that Local Union 3551, United Steelworkers of America, AFL-CIO, was on strike or the fact that at a conference held on May 22, 1964, between representatives of the Company and the Union, Wallen was informed that the Union was unable to get the men back to work unless the Company made some concessions.

[7/] No evidence was offered as to the size of the Company's labor force prior to the strike or on the date of the hearing.

> Before we are able to advise Crescent Bed Company as to what further procedure should be taken in connection with the alleged grievances, we would want to know what position the international union takes with reference to the contract. If the international and the local are in disagreement as to whether there is or is not a contract, we would want to be advised of that fact. On the other hand, if the international and the local agree that there is a contract, we would appreciate your explanation as to why a signed copy has not been furnished to the company.

Nassar replied on May 8, advising merely that an executed copy of the December 1963 Instrument had been delivered to the Company on that date.[8/]

On May 12, 1964, Wallen wrote to Nassar advising that:

> The action of the union in striking the company, coupled with the refusal to return a signed copy of the signed agreement -- all considered against the background of the union's attempt to conduct further negotiations pertaining to the rates in effect in the plant since December -- lead the

---

8/ General Counsel introduced in evidence two documents presumably for the purpose of explaining the Union's delay in returning the December 1963 Instrument to the Company. The first is a letter of inquiry about the Instrument from Warren V. Morel to Clifford Shorts at the Union's Pittsburgh office, dated May 1, 1964. No explanation is offered on behalf of the Union as to why Morel, Nassar or other representative of the Union who had been dealing with the Company had not made an inquiry any earlier. The second is a letter, dated May 14, 1964, from Shorts to Oral L. Garrison, the Union's district director at Tampa, Florida, advising that "the signatures of the International Officers were affixed on January 15, 1964, but the copies which should have been returned to your office were inexplicably held here in the Contract Department until a few weeks ago." While Shorts' letter states that the delay was inexplicable, Wallen's testimony suggests that the reason might have been a request by Nassar or other representative of the Union that delivery of the Instrument be withheld until the dispute with the Company concerning incentive rates should be resolved.

> company to the inevitable conclusion that there is at this time no contract in effect between the company and the union.
>
> At all times since December 1963, the union has taken the position that it was free to continue the negotiation of rates. This position is completely inconsistent with the existence of a final and complete agreement between the parties. Your signing and returning a copy of the contract some three weeks after the beginning of the strike cannot create an effective contract where none existed prior to the strike.
>
> Please be advised of our willingness to discuss any phase of this matter at such early date and time as is mutually convenient.[9/]

Nassar answered by letter, dated May 15, 1964, advising that the Union deemed the agreement to be in full force and effect. In addition, he called attention to various transactions since December 16, 1963, such as the processing of grievances, to show that both parties had been acting in a manner which indicated that they considered themselves bound by a contract. Wallen replied on May 18. He assured Nassar of his willingness to meet "at any time to discuss any and all matters pertaining to our present problem" and suggested that a meeting should be arranged for an early date which should be attended by their respective attorneys.

Such meeting was held on May 22, 1964. Read on behalf of the Company advised the Union that it was his opinion that no contract existed. There was discussion regarding the termination of the strike and the union representatives stated that, although they had made every

---

9/ While Wallen in said letter advised the Union that the Company did not recognize the December 1963 Instrument as an effective agreement, it is significant that he did not express any doubt that the Union still continued as the representative of the Company's employees and that he affirmatively expressed his willingness to continue discussions with the Union.

effort to end the strike, unless they have something to offer the membership they could not successfully prevail upon the men to return to work. On May 25, Read wrote to Nassar advising that the Company was unwilling to make any concessions but offered to meet again if Nassar or the Union's attorney "feel that there is any purpose in discussing this matter further." Nassar replied on June 9 by letter in which he reasserted his opinion that the December 1963 Instrument is still in full force and effect and complained that the Company was not complying with the dues check-off provision thereof since April and requested a seniority list. Read answered on June 12 advising that the Company does not feel obligated to comply with Nassar's request.

General Counsel asserts that "since May 12, Respondent has implemented numerous changes in terms and conditions of employment, in derogation of the contract and without notice to and bargaining with the Union as collective bargaining representative of Respondent's employees in an appropriate unit." While there is no dispute that the Company has repudiated any contract it may have had with the Union and there is uncontradicted testimony that the Company has refused to process grievances, to accept Union check-off cards and to furnish the Union with a seniority list, the General Counsel has not established that the Company unilaterally has effected any other changes in the terms and conditions of employment of the employees in the certified collective bargaining unit.[10/]

10/ General Counsel introduced in evidence a document, dated September 1, 1964, purporting to state company policy regarding vacations and other employee benefits and a second document, dated August 24, 1964, purporting to set forth piecework rates for the spring and wire department. Absent testimonial explanation, these documents alone do not establish that any changes had been effected thereby. So far as the record shows they merely recapitulated the rates and benefits in effect since December 1, 1963. Similarly, the testimony of Nassar concerning alleged unilateral changes by the Company, unsupported by specific examples, is too vague and general to constitute proof of unlawful unilateral action on the part of the Company since May 12, 1964.

B. Conclusions

The complaint sets forth three separate grounds for the alleged violations of Section 8(a)(5), and derivatively Section 8(a)(1), of the Act on the part of the Respondent:

First, it alleges that the Respondent has terminated, and since May 12, 1964 has refused to give effect to, the 1963 Understanding without having complied with the requirements of Section 8(d) of the Act. For the reasons explicated below I find merit to this allegation.

Second, the complaint alleges that since May 12, 1964, the Respondent has refused to bargain collectively with the Union "in that Respondent has refused to give effect to the union-security provisions of the [1963 Understanding], while asserting that it doubts the Union's status as the representative of the majority of the employees in the appropriate unit . . . ." Although Respondent in its brief contends that the Union no longer is the majority representative of its employees, no evidence was adduced at the hearing that the Company had made such assertion to the Union at any relevant time. To the contrary, the evidence in the record indicates that, at all relevant times, the Company was willing to bargain with the Union. Furthermore, this allegation does not assert that the Company has failed or refused to bargain with the Union when requested to do so, but only that the Respondent has refused to give effect to the union-security provisions thereof. Such charge of breach of contract does not allege an unfair labor practice. Association of Westinghouse Salaried Employees v. Westinghouse Electric Corp., 348 U.S. 437, footnote 2. In addition, although General Counsel has proved that the Company refused to accept checkoff cards, no evidence was adduced to establish that it refused to give effect to the union-security provisions of the 1963 Understanding. Thus, not only is there a failure of proof to support this allegation of the complaint, but even if the facts alleged had been proved, they would not establish an unfair labor practice.

Third, the complaint alleges that:

> Commencing on or before May 12, 1964, and at all times thereafter, Respondent refused, and has continued to refuse, to bargain collectively with the Union as the exclusive collective bargaining representative of all of the employees in the unit . . . in that Respondent negotiated with the Union in bad faith.

This allegation seems to aver that the Company engaged in discussions and conferences with the Union without any sincere intention of arriving at a mutually acceptable agreement. No evidence whatsoever was adduced in support of any such contention. In his brief General Counsel describes the scope of the issues herein to be as follows:

> The gravemen of the violation of Section 8(a)(1) and (5) alleged in the Complaint in this matter is the Respondent's termination on May 12 of, and its subsequent refusal to give effect to, the collective bargaining contract agreed upon on December 1, 1963, and signed by representatives of the Union and Respondent on December 16, 1963. After May 12, as an incidence of its termination of the contract, Respondent ceased giving effect to the union-security provisions of the agreement and effected additional unilateral changes in the terms and conditions of employment of its employees without prior notice to and bargaining with the Union; all, in derogation of the contractual and statutory rights of its employees and the Union.

The contention that the Respondent failed to give effect to the union-security provisions of the 1963 Understanding is an argument in support of an alleged breach of contract but not of an unfair labor practice and, in any event, is not sustained by the evidence. The contention that the Company effected unlawful unilateral changes in the terms and

conditions of employment of its employees, I likewise find has not been established by the evidence.[11]

There is no dispute that on November 30, 1963, when the negotiations were concluded, the Union was the lawful representative of the employees for whom it was bargaining. The parties' contract was not reduced to writing until December 16, 1963, and even at that date was not fully executed because the representatives of the Union who conducted and attended the negotiations alone did not have the authority to execute a written collective bargaining agreement on behalf of the Union. The Board has observed that "[i]n the field of labor law, it is customary to consider a written document embodying the terms of a collective bargaining relationship as the contract between the parties and that it is not to be effective until signed by both parties to the agreement."[12] However, this custom will give way to a contrary intention on the part of the contracting parties. The Act does not require collective bargaining agreements to be reduced to writing and signed in order to be effective.[13] "[A] contract may be validly entered into even though the written instrument evidencing the terms of said contract has not been executed by the parties."[14]

---

[11] I have assumed that General Counsel by said contention is not referring to conduct incidental to Respondent's termination of its contract with the Union, such as Respondent's refusal to furnish the Union with a seniority list, to honor the check-off provision of the contract or to accept grievances filed by the Union, otherwise there would be no difference between the first and third allegations summarized above.

[12] Associated Machines, Inc., 114 NLRB 390, 391, enforced, 239 F.2d 858 (C.A. 6).

[13] Hamilton Foundry & Machine Co. v. International Molders & Foundry Workers Union of North America, 193 F.2d 209, 213-214, and cases cited therein.

[14] Hamilton Foundry & Machine Co., supra, at p. 213.

In this case, the December 1963 Instrument was not executed by the international officers of the Union and delivered to the Company until May 8, 1964. The signatures of staff representative Nassar and the members of the local union committee affixed to the Instrument on December 16, 1963, were not adequate to bind the Union, because under its constitution and pursuant to its practices, collective bargaining agreements require the approval and signatures of the international officers. Respondent contends that the events which transpired after the conclusion of the parties' negotiations prevented the December 1963 Instrument from becoming an effective contract on May 8, 1964, or before such date.[15/] However, it is unnecessary for me to resolve this question in order to decide the single remaining issue in this case, namely, whether the Respondent terminated an oral agreement without first complying with the conditions set forth in Section 8(d) of the Act.[16/]

On November 30, 1963, the representatives of the Company and the Union reached an understanding as to an agreement to succeed the 1961 Contract which terminated that night. Immediately thereafter both parties began to deal with each other on the basis that the 1963 Understanding was in full force and effect and binding upon them and both parties accepted the benefits that flowed therefrom. Thus, on December 1, 1963, the Company put into effect the wage adjustments called for by the Understanding. The Union and the Company thereafter began to process grievances pursuant thereto. Later, when a dispute arose concerning

---

15/ If, as Respondent contends, the Union did not represent a majority of the Company's employees in an appropriate unit on May 8, 1964, the Union may not then have had the legal capacity to accept and to place in effect the December 1963 Instrument by the delivery of an executed copy thereof to the Company on that date. See I.L.G.W.U. v. N.L.R.B. (Bernhard-Altman), 366 U.S.731.

16/ There is no question that if the oral understanding had been validly superseded by the written Instrument on May 8, 1964, the Respondent has committed unfair labor practices by refusing to honor the latter agreement.

adjustments of incentive rates, both parties treated with each other on the basis that the terms of the 1963 Understanding was controlling.[17/] In addition, the Company, as it had a right to do under the 1963 Understanding, solicited and obtained the Union's cooperation in its attempts to overcome the effects of a wildcat strike that began on April 23, 1964. Accordingly, I find that as of December 1, 1963, the Company and the Union had entered into a contractual relationship based upon the oral agreement reached by their representatives on November 30, 1963.

On April 23, 1964, the employees of the Company began a strike. The Respondent argues that this constituted a renunciation of any contract then existing between the Company and the Union. However, contrary to the Respondent, I find that the Union did not call the strike, did not thereafter ratify it and did not condone the action of its members who participated in it. Thus, I find that the strike did not constitute a renunciation by the Union of its contractual relationship with the Company or a breach of any of its contractual obligations to the Company.[18/] The Respondent also argues that "the Union, over a period of nearly 5 months conducted itself in a manner wholly inconsistent with the existence of an agreement." I find no support in the record for this contention. To the contrary, except for the one remark made by Nassar to Wallen in February or March 1964, the Union's conduct throughout the

---

17/ Even if Respondent is correct in its contention that the Union was seeking to negotiate for a change in a provision of the 1963 Understanding, this still would reflect a recognition on the part of the Union that it was bound by the Understanding.

18/ On May 22, Union representatives advised the Company that they were unable to induce the strikers to return to work unless the Company was prepared to make some concessions. This statement was merely an iteration of the existing state of facts and an acknowledgment by the Union that it had no control over the strikers. Particularly as by such date the Union had delivered to the Company an executed copy of the December 1963 Instrument, the statements made at the May 22 meeting cannot be construed as an attempt by the Union to renounce its contractual relationship with the Company. See also Local 721 v. Needham Packing Co., 376 U.S. 247.

times relevant hereto was wholly consistent with its recognition of the existence of a contractual relationship with the Company. Furthermore, the remark attributed to Nassar by Wallen is not susceptible to the interpretation that the Union had renounced the 1963 Understanding which was governing its relationships with the Company in view of the fact that the Union representatives continued in their efforts to resolve the incentive wage dispute through discussions and negotiations with the Company and otherwise, at least so far as the record shows, continued to observe its obligations under the 1963 Understanding.

Respondent's principal argument is that the Union's representatives at the negotiations had no authority to enter into any agreement with the Company and that the effectiveness of any contract negotiated by them "depended upon its acceptance by the International." According to the Respondent, "We are not concerned here with deciding whether the International would have, in all probability, accepted the contract as of December 15, 1963. The fact is that it did not accept and its subsequent actions conclusively show that it rejected the proposal." This position seems to be based upon a theory that no contract, in the circumstances of this case, could have become effective before it was countersigned and delivered by the Union's international officers. In advancing this argument Respondent does not attempt to explain the relationship that existed between the Company and the Union after the conclusion of their negotiations and before the alleged rejection of the December 1963 Instrument.

Were the rules pertaining to ordinary commercial agreements applicable here, I might well find that the Understanding reached between the Company representatives and the Union representatives on November 30, 1963, did not result in any agreement, either oral or written, coming into effect before the same was approved and signed by the international officers. However, "a collective bargaining agreement is not an ordinary contract. '. . . [I]t is a generalized code to govern a myriad of cases which the draftsmen cannot wholly anticipate. . .

The collective agreement covers the whole employment relationship. It calls into being a new common law -- the common law of a particular industry or of a particular plant'." John Wiley and Sons v. Livingston, 376 U.S. 543, 550. For the purposes of determining the issues herein it is not necessary for me to decide whether the writing which was finally delivered to the Company by the Union on May 8 is the contract between the parties and subsists during the entire term stated therein. What I do find is that on November 30, 1963, the Company and the Union reached an oral agreement effective as of December 1, 1963. Both parties thereafter acted (at least until May 12, 1964) on the assumption that they were bound by the terms of the 1963 Understanding; they accepted the benefits of the agreement and fulfilled their respective obligations thereunder. The Company did not question the authority of the representatives of the Union to enter into the Understanding and the Union representatives conducted themselves as if they had such authority. A relationship between the Company and the Union had therefore come into existence pursuant to which the terms and conditions of employment were established for those of the Respondent's employees who were represented by the Union. Such relationship arising out of a consensual agreement between the Company and the representative of its employees constitutes a contract within the meaning of Section 8(d) of the Act.

In reaching the conclusion that an oral agreement between the Union and Company became effective on December 1, 1963, I have not ignored the fact that Nassar did not have authority to execute a written agreement on behalf of the Union. However, despite such limitation, Nassar was clothed with apparent authority to enter into a contractual relationship with the Company and the Union is therefore bound by the commitments made by Nassar within the scope of his apparent authority. Furthermore, through the correspondence between Nassar and district director Garrison in early January 1964, Nassar's superiors had obtained timely knowledge of the fact that Nassar had entered into an agreement on behalf of the Union and that the terms of the agreement

had become immediately effective. In such circumstances the Union by not repudiating Nassar's actions and by permitting its members to accept the benefits of the oral agreement negotiated by Nassar effectively ratified the contract. Any view other than that an oral contract had become effective on December 1, 1963, could lead to indefensible results. To illustrate: assume that the Union had rejected the December 1963 Instrument after the terms of the 1963 Understanding had been in effect for a period of time (and that there was no issue as to the Union's continuing majority). Such rejection would then have been effective to reopen negotiations between the Company and the Union -- but from a different starting point than the original negotiations because the gains obtained as a result of the original negotiations would already be in effect. In such circumstances, to hold that no contract was in existence between December 1, 1963 and the date of the Union's rejection would place the Union in the advantageous position of being able to retain the benefits of the earlier bargain while avoiding the obligations imposed upon contracting parties by Section 8(d) of the Act. Thus, the primary objective of Section 8(d) of providing for a cooling off period during which time negotiations can be conducted free of an overhanging threat of strike or lockout would be frustrated.[19/]

As I find that an oral contract came into existence as of December 1,1963, I further find that in accordance with Section 8(d) of the Act neither the Company nor the Union had the right to terminate or modify

---

19/ In my view the right which the Union reserved to itself to reject the oral agreement entered into on its behalf by Nassar made such agreement one for an indefinite term, rather than for a fixed term. Either party could have terminated said oral contract in the manner permitted by and in accordance with the requirements of Section 8(d) of the Act. Boeing Airplane Co. v. N.L.R.B., 174 F.2d 988, 991 (C.A.D.C.). Central Illinois Public Service Company, 139 NLRB 1407, 1414-1415 in which the Board was concerned with the circumstances under which a contracting party may refuse to engage in further negotiations is distinguishable from the instant case which is concerned with the applicability of Section 8(d)(1), (2), (3) and (4) to oral agreements.

such contract without complying with the conditions set forth in said section of the Act. Accordingly, as the Company on May 12, 1964, purported to terminate the contract without complying with the requirements of Section 8(d), I find that it has violated Section 8(a)(5) of the Act.[20/]

IV. The effect of the unfair labor practices upon commerce

The activities of the Respondent set forth in section III, above, occurring in connection with its operations, described in section I, above, have a close, intimate and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The remedy

Having found that the Respondent has engaged in certain unfair labor practices, I shall recommend that the Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

I have found that the Respondent on May 12, 1964, unlawfully terminated the oral agreement it had entered into with the Union on November 30, 1963, and since said date it has refused to give effect to some of the terms and provisions thereof. In order to remedy such unfair labor practices, I shall recommend that the Respondent cease and desist from refusing to honor, enforce and maintain in effect its 1963 Understanding with the Union until such time as said agreement shall be lawfully terminated. The order recommended herein would not be effective in promoting stability in collective bargaining relationships if the Company should be privileged hereunder to terminate its contract with the Union within approximately 60 days from the date hereof after the lapse of almost a year during which the Respondent unlawfully has been

---

20/ N.L.R.B. v. Lion Oil Company, 352 U.S. 282.

avoiding its statutory collective bargaining obligations. "[A] bargaining relationship once rightfully established must be permitted to exist and function for a reasonable period in which it can be given a fair chance to succeed." Frank Bros. Company v. N.L.R.B., 321 U.S. 702, 705. Accordingly, in order to give the Company and the Union adequate opportunity to develop a meaningful relationship as contracting parties, I shall recommend that the Respondent shall not terminate its 1963 Understanding prior to November 30, 1966. I have selected said date as the earliest date on which the Company may terminate its 1963 Understanding because it was the date originally selected by the Company and the Union themselves for such purpose and because it will not suspend for an undue length of time the opportunity of Respondent's employees to select another or no representative.[21/]

General Counsel has not established that Respondent unlawfully has made any unilateral changes in the wages or the other terms and conditions of employment of the employees covered by the 1963 Understanding. Furthermore, this proceeding has developed from a dispute between the Company and its employees and the Union concerning the meaning of certain provisions of the 1963 Understanding which authorizes the Company to make certain unilateral changes in incentive rates. As the parties' contract contains comprehensive grievance and arbitration provisions, I believe that a good faith effort on the part of the Company and the Union to resolve such dispute, as well as any other differences that may exist between them concerning the interpretation and application of their contract, by following the procedures of and using the machinery provided by their contract would achieve more satisfactory results than for the Board to exercise its jurisdiction to resolve such matters in this case. Accordingly, I shall not include herein any recommendation that the Respondent make whole employees for loss of

---

21/ See N.L.R.B. v. Warrensburg Board & Paper Corporation, 340 F.2d 920 (C.A. 2).

earnings by reason of any action it may have taken unilaterally in breach of its 1963 Understanding. It should be understood, however, that the intent of the Recommended Order herein is that the terms of the 1963 Understanding shall be given retroactive effect to December 1, 1963, the effective date of the parties' contract.

Upon the basis of the foregoing findings of fact and upon the entire record in this case, I make the following:

Conclusions of Law

1. By terminating on May 12, 1964, the oral collective bargaining agreement that it had entered into with the Union on November 30, 1963, covering the employees in the appropriate collective bargaining unit described below, without having complied with the conditions of and without having followed the procedures set forth in Section 8(d) of the Act, the Respondent has engaged, and is engaging, in unfair labor practices within the meaning of Section 8(a)(5) of the Act. The appropriate collective bargaining unit is composed of all production and maintenance employees employed at Respondent's New Orleans, Louisiana, plant, including truckdrivers, excluding office clerical employees, guards, and supervisors as defined in the Act.

2. By the foregoing conduct Respondent has interfered with its employees in the exercise of the rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

3. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

RECOMMENDED ORDER

Upon the foregoing findings of fact and conclusions of law and the entire record in the case, and pursuant to Section 10(c) of the Act, I hereby recommend that the Respondent, The Crescent Bed Company, Inc., its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Refusing to honor, enforce and maintain in effect the oral agreement entered into by the Respondent and the Union on November 30, 1963, covering the employees in the appropriate collective bargaining unit described below until November 30, 1966, or until such later date as said agreement shall have been lawfully terminated. The appropriate collective bargaining unit is composed of:

> All production and maintenance employees employed at Respondent's New Orleans, Louisiana, plant, including truck-drivers, excluding office clerical employees, guards and supervisors as defined in the Act.

(b) In any like or related manner, interfering with its employees in the exercise of the rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act.

(a) Post at its plant in New Orleans, Louisiana, the notice attached hereto and marked "Appendix."[22/] Copies of such notice, to be furnished by the Regional Director for the Fifteenth Region, shall,

---

22/ In the event that this Recommended Order is adopted by the Board, the words "A DECISION AND ORDER" shall be substituted for the words "THE RECOMMENDED ORDER OF A TRIAL EXAMINER" in the notice. In the further event that the Board's Order is enforced by a decree of a United States Court of Appeals, the words "A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER" shall be substituted for the words "A DECISION AND ORDER."

after being duly signed by an authorized representative of the Respondent, be posted by it immediately upon receipt thereof and maintained by it for a period of 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced or covered by any other material.

(b) Notify said Regional Director in writing within 20 days from the date of receipt of this Decision what steps Respondent has taken to comply herewith.[23/]

Dated at Washington, D. C. April 16, 1965.

/s/ Herbert Silberman
Trial Examiner

23/ In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify said Regional Director, in writing, within 10 days from the date of this Order what steps the Respondent has taken to comply herewith."

APPENDIX

NOTICE TO ALL EMPLOYEES

PURSUANT TO

THE RECOMMENDED ORDER OF A TRIAL EXAMINER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify you that:

> WE WILL honor, enforce and maintain in effect the oral collective bargaining agreement entered into with the UNITED STEELWORKERS OF AMERICA on November 30, 1963, until November 30, 1966, or until such later date as said agreement shall be lawfully terminated. The employees covered by said agreement include:
>
> > All production and maintenance employees employed at our New Orleans, Louisiana, plant, including truckdrivers, excluding office clerical employees, guards, and supervisors as defined in the Act.

THE CRESCENT BED COMPANY, INC.
(Employer)

Dated _____ By _____
(Representative) (Title)

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced or covered by any other material.

Employees may communicate directly with the Board's Regional Office, T6024 Federal Building (Loyola), 701 Loyola Avenue, New Orleans, Louisiana 70113 (Tel. No. Main 24142), if they have any questions concerning this notice or compliance with its provisions.

EXHIBIT A

[Annexed to Respondent's initial brief in support of its exceptions to the decision and recommended order of the Trial Examiner, filed with the N.L.R.B., Case No. 15-CA-2507]

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

NEW ORLEANS DIVISION

UNITED STEELWORKERS OF AMERICA AFL-CIO 1500 Commonwealth Building Pittsburgh, Pennsylvania 15222 Plaintiff	Civil Action No. 14981 DIVISION B
vs.	
CRESCENT BED COMPANY, INC. 600 South Broad Street New Orleans, Louisiana Defendant	

COMPLAINT

United Steelworkers of America, AFL-CIO, files this its Original Complaint against Crescent Bed Company, Inc., defendant, and for cause of action shows the Court:

1.

Plaintiff, United Steelworkers of America, is an International Union affiliated with the AFL-CIO, and is a labor organization within the meaning of the Labor-Management Relations Act, 1947, (29 U.S.C.A. Secs. 141 et seq.) an Act of Congress, being engaged in the representation of employees in matters of collective bargaining pertaining to wages, hours, and working conditions in industries affecting commerce.

Defendant is a corporation, duly organized under law and is engaged in business at its plant in Orleans Parish, Louisiana. Defendant at all times material hereto engaged in interstate commerce, and in the production of goods for commerce and is, therefore, an employer within

the meaning of the Labor-Management Relations Act, 1947 (29 U.S.C.A. Secs. 141 et seq.) an act of Congress.

Plaintiff is the certified exclusive bargaining agent for certain classes of employees at defendant's plant in Orleans Parish, Louisiana. At all material times hereto, plaintiff and defendant have been parties to a collective-bargaining contract as contemplated by said act of Congress.

2.

The jurisdiction of the Court exists by virtue of Section 301 of Title III of the Labor-Management Relations Act, 1947, 29 U.S.C.A. Sec. 185, this being a suit for violations of a contract between an employer and a labor organization representing employees in an industry affecting commerce as defined in the said Act.

3.

Plaintiff and defendant entered into a written collective-bargaining agreement, which contract by its terms has remained, and will remain, in effect from December 1, 1963 through November 30, 1966. A true copy of the aforesaid collective-bargaining contract is attached hereto as Exhibit A.

4.

On or about May 12, 1964, defendant informed plaintiff, United Steelworkers of America, that the collective-bargaining agreement was not operative and defendant refused thereafter to provide some of the benefits and observe some of the provisions of said collective bargaining agreement for the benefit of its employees who are members of plaintiff, United Steelworkers of America. Defendant also refused to recognize plaintiff as collective bargaining representative of its employees and refused to deal with plaintiff with reference to the contractual claims of its employees.

5.

At the time the events described in paragraph 4 hereof occurred, grievances numbers 5 through 8, true copies of which are attached hereto as Exhibits B through E, all alleging violations by defendant of the collective-bargaining agreement, had been duly processed as required by the aforesaid collective-bargaining agreement and were awaiting arbitration. Plaintiff repeatedly requested meetings with defendant to resolve grievances numbers 5 through 8, but defendant refused and continues to refuse to meet with respect to the aforesaid pending grievances.

6.

Subsequent to the time of the events described in paragraph 4 hereof, grievances numbers 10 through 16, true copies of which are attached hereto as Exhibits F through L, all alleging violations by defendant of the collective-bargaining agreement had been filed in accordance with Article XI (Grievance Procedure of said agreement). Plaintiff repeatedly requested meetings with defendant to resolve grievances numbers 10 through 16, but defendant refused and continues to refuse to meet with respect to the aforesaid pending grievances.

7.

On or about April 20, 1964, plaintiff requested in writing that the parties submit to arbitration unresolved grievances numbers 5 through 8, as is provided in Article XII of the collective-bargaining agreement, but defendant refused to proceed with arbitration. On or about September 11, 1964, plaintiff requested in writing and orally thereafter that the parties submit to arbitration the issues encompassed in grievances numbers 10 through 16 as is provided in Article XII of the collective bargaining agreement, but defendant never responded to such requests.

On or about April 20, 1964, plaintiff requested that the American Arbitration Association provide the parties with a list of arbitrators relative to grievances numbers 5 through 8, in accordance with the provisions of Article XII of the collective-bargaining agreement and the

American Arbitration Association complied with said request. On or about September 28, 1964, plaintiff requested that the American Arbitration Association include grievances numbers 10 through 13 among the grievances to be heard by the arbitrator selected from the original panel submitted in accordance with the provisions of Article XII of the collective bargaining agreement, which request is still pending. Plaintiff has repeatedly requested that defendant meet to select an arbitrator to arbitrate all pending grievances, but defendant never responded to such requests.

8.

The aforesaid refusal to arbitrate constitutes an infringement of plaintiff's rights as collective bargaining representative and renders it impotent in this vital function of its obligation and duty to its members and the employees in the unit it represents, thereby causing harm, injury and damage which cannot be calculated with certainty required by law of damage; accordingly, having no other adequate remedy, plaintiff is entitled to have the agreement specifically enforced by an order from this Court directing defendant to perform its agreed duty and obligation to submit all pending grievances as described in paragraphs 5 and 6 hereof to arbitration in accordance with the grievance and arbitration procedures of said agreement.

WHEREFORE, plaintiff prays that it be granted such legal and equitable relief as it may be entitled to receive in the premises, including specific performance of the agreement to arbitrate, by a judgment of this Court mandatorily enjoining and ordering the defendant to submit the aforesaid grievances to arbitration, and for costs of suit.

/s/ George C. Stringer, Jr., Esq.
Stringer & Manning
6222 Jefferson Highway
New Orleans 23, Louisiana
Attorney for Plaintiff

/s/ Nathan Lipson
1500 Commonwealth Building
Pittsburgh, Pennsylvania 15222

Of Counsel

EXHIBIT B

[Annexed to Respondent's initial brief in support of its exceptions to the decision and recommended order of the Trial Examiner, filed with the N.L.R.B., Case No. 15-CA-2507]

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

NEW ORLEANS DIVISION

UNITED STEELWORKERS OF AMERICA AFL-CIO 1500 Commonwealth Building Pittsburgh, Pennsylvania 15222 Plaintiff vs. CRESCENT BED COMPANY, INC. 600 South Broad Street New Orleans, Louisiana Defendant	Civil Action No. 14981 DIVISION B

ANSWER

Now into Court comes Crescent Bed Company, Inc., defendant, and for answer to the allegations of the complaint, respectfully represent to the Court:

FIRST DEFENSE

This Honorable Court lacks jurisdiction over the subject matter of this case in that jurisdiction is invoked exclusively under 29 U.S.C.A. Sec. 185, and defendant shows there is no labor contract in effect between the parties as required by said section.

SECOND DEFENSE

The complaint fails to state a claim upon which relief can be granted.

THIRD DEFENSE

I.

Paragraphs one and two of Article I of the complaint are admitted. The allegations of paragraph three of Article I of the complaint are denied. Defendant avers that plaintiff was certified by National Labor Relations Board as bargaining agent for certain classes of employees at defendant's plant on October 2, 1961, but that plaintiff does not now represent a majority of defendant's employees.

II.

The allegations of paragraph 2 of the complaint are denied.

III.

The allegations of paragraph 3 of the complaint are denied.

IV.

Defendant admits having informed plaintiff on May 12, 1964, that the alleged labor contract was not in effect; the remainder of the allegations of Article 4 of the complaint are denied.

V.

Defendant admits the presentation to it of Exhibits B, C, D and E attached to the complaint and admits processing said grievances in accordance with the procedure set forth in the alleged labor agreement. Defendant denies the remainder of the allegations of Article 5 of the complaint.

VI.

Defendant denies the allegations of Article 6 of the complaint, except presentation to it of Exhibits F through L, attached to the complaint and that plaintiff requested to meet as alleged.

VII.

Defendant denies the allegations of Article 7 of the complaint, except that defendant admits that plaintiff requested arbitration as alleged.

VIII.

Defendant denies the allegations of Article 8 of the complaint.

Further answering, defendant avers:

IX.

At all times pertinent hereto, no valid collective bargaining contract had been in effect between the parties because of plaintiff's failure and refusal to sign and deliver to the defendant a copy of the alleged contract.

X.

In the alternative, and only in the event the Court finds that the parties executed an effective collective agreement, defendant avers that said agreement has been rescinded in its entirety by virtue of plaintiff's material breach thereof and accordingly plaintiff is not entitled to the relief prayed for.

WHEREFORE, defendant prays that this answer be deemed good and sufficient, and that plaintiff's suit be dismissed at its cost.

Respectfully submitted,

MONTGOMERY, BARNETT,
BROWN & READ

By:

/s/ Henry J. Read

/s/ Daniel Lund

806 National Bank of Commerce
Building
New Orleans, Louisiana 70112

[Certificate of Service]

DECISION AND ORDER

On April 16, 1965, Trial Examiner Herbert Silberman issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondent and the General Counsel filed exceptions to the Decision and supporting briefs; the Charging Union filed cross-exceptions and a brief; and the Respondent and General Counsel then filed answering briefs to each other's exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions, cross-exceptions and briefs, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, as modified herein.

The salient facts are summarized here. Shortly before the termination date of their first contract, the parties began negotiating a new agreement. Respondent was represented by its president, Wallen, and the Union by Nassar, a staff representative, together with a committee from its Local 3551. On November 30, 1963, the parties came to an understanding on the terms of a new agreement, and the Union undertook to prepare a written draft for the signature of the parties. Respondent put into effect the wage increases and other improved benefits called for in the agreement, as of December 1. On December 16, 1963, a written copy of the agreement was signed by Wallen and Nassar, and the latter then took all the signed copies with him for submission first to the Union's District headquarters and eventually to the Union's International officers in Pittsburgh. This was in accord with the requirements of the

Union's constitution that the International was to be the contracting party in all bargaining agreements, and that all such agreements had to be approved and signed by its officers.

In the meantime, a dispute arose between the parties as to the meaning of a newly adopted provision in the 1963 agreement, relating to Respondent's right to adjust incentive rates downward. The employees were dissatisfied with the adjustments effected, and some of them engaged in a slowdown. It was then late in March 1964, and Wallen began pressing Nassar for a copy of the executed agreement which had not yet been returned by the International. Another month passed, and on April 23, 1964, the employees struck, in violation of the agreement, when Respondent disciplined an employee for engaging in a slowdown. Nassar sent Respondent a telegram advising it that the Union had not authorized the stoppage, and, at an employees' meeting, requested them to end their strike and return to work. Later, the Union placed its Local under an administratorship. Picketing continued until June 16, but by that time a number of the strikers had been replaced, and the plant was in full operation.

About 10 days after the strike began, Respondent's attorney wrote Nassar pointing out that the agreement had never been signed by the International officers, that the employees were on strike in violation of the no-strike provision, and requesting that the International state its position with respect to the contract. Four days later, on May 8, 1964, Nassar replied that an executed copy of the agreement had been delivered to Respondent that day. On May 12, President Wallen responded, saying that he had received the signed contract, but did not believe that there was at that time a contract in effect between the parties. Further letters and meetings brought about no changes in their positions, the Union insisting that there was a binding contract in effect, and the Respondent insisting there was not.

1. On these facts, as more fully discussed in his Decision, the Trial Examiner found that the parties were bound by an oral agreement,

providing the same substantive terms as the agreement which Wallen and Nassar had signed on December 16, 1963. We agree that the parties had entered into, and were bound by an agreement, but, contrary to the Trial Examiner, we hold that it was the written contract which governed their relationship. It is evident that the parties never contemplated entering into any agreement other than that fixed by the written document which Nassar submitted to his Union's officers for their approval. Thus, as late as May 4, 1964, Respondent's counsel inquired of Nassar as to the International's position with respect to the contract, pointing out that the employees were on strike in violation of its no-strike provision but without intimating in any way that Respondent for that or any other reason considered itself or the Union freed from the obligations of the written agreement. Four days later, with the Union's delivery of the signed agreement, the final step in the formalities contemplated for effectuation of the agreement were completed. Without deciding whether Nassar's approval of the agreement on December 16, 1963, made it immediately binding on the Union, we find that certainly no later than May 8, 1964, the Respondent and the Union had finally completed the formal requirements for complete effectuation of the agreement whose terms they had decided upon on November 30, 1963.

2. We agree with the Trial Examiner that the Union was not responsible for the slowdown initiated by some of the employees in protest against the Respondent's incentive rate changes, or for the strike which followed. There is no evidence of clandestine support by the Union of the slowdown and strike which would overcome the evidence that Nassar advised Respondent that the Union had not authorized the strike; his request of the employees that they return immediately to work; and the disciplinary measure of placing the offending Local under an administratorship. Nassar's efforts, in discussing the incentive rate dispute with Respondent, to have it adopt the Union's interpretation of that newly drafted section of the contract seems to have been more an attempt to clarify its intent than a device to modify or rewrite the express terms

of the clause. We see no reason, therefore, for finding that the Union had engaged in a course of conduct before May 8, 1964, which in and of itself would justify the Respondent in treating the agreement, if it were not already effective, as being terminated, rescinded, or repudiated before that date.

3. The Charging Union has pending a suit against Respondent under Section 301 of the Act, in which it seeks enforcement of the arbitration provisions of the 1963 contract. Respondent admits that the Board and the Federal District Court in which the suit has been brought have concurrent jurisdiction, and that the Union may at the same time seek a statutory remedy from the Board in the form of a bargaining order, and a contractual remedy from the Court, in the form of an order to arbitrate. Respondent argues, however, that the issue, basic to both proceedings, is whether there is a binding contract in effect, and that this issue should first be decided by the Court, since it is the only forum which can order enforcement of the contract. We believe, on the contrary, that the Board, in remedying the statutory violation of a refusal to bargain through failing to abide by an existing contract, in accordance with the obligations imposed by Section 8(d) of the Act, may also order enforcement of the contract by requiring the offending party to honor the contract and to assume its obligations thereunder.[1/] Whether the Charging Union's course of conduct between December 16, 1963, and May 8, 1964, justified Respondent in repudiating the contract or in considering it mutually rescinded, is a question which the Board is as competent to resolve as the Court, since it underlies, and is preliminary to, the statutory issue of whether Section 8(a)(5) has been violated through Respondent's refusal to honor the contract after May 12, 1964.

4. It is not for the Board to construe the full meaning or effect of the contractual provision by which Respondent was permitted to make certain unilateral changes in incentive rates, and which has given rise

---

[1/] Hyde's Super Market, 145 NLRB 1252, enfd. 339 F.2d 568 (C.A. 9).

to this proceeding.[2/] The parties are free to pursue their respective contentions as to the proper interpretation of this provision under the grievance-arbitration clause of the contract which is presently in effect and which we are ordering Respondent to abide by.

Other changes unilaterally instituted by Respondent in the terms and conditions of employment established by the contract, such as its refusal to process grievances, to accept Union checkoff cards, and to furnish the Union with an up-to-date seniority list, are independent violations of Section 8(a)(5) and (1), but require no specific remedial order since they will automatically be rectified when Respondent complies with our order to honor and abide by the contract. There were also apparently some unilateral changes in eligibility for vacation and holiday pay which, in our opinion, were so minimal as not to require any remedy other than reinstitution of the contractual terms with respect to these matters.

Finally, reimbursement of dues to the Union, which Respondent failed to check off from its employees' wages, will not be ordered, in the exercise of our discretionary authority in remedial matters, because of the Union's own dereliction in delaying prompt execution of the contract by its International officers.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that Respondent, The Crescent Bed Company, Inc., New Orleans, Louisiana, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Repudiating, refusing to honor, or, except as permitted by Section 8(d) of the Act, unilaterally modifying or terminating the written agreement entered into between it and the Union, as found above, or

---

[2/] United Telephone Company of the West, 112 NLRB 779; Morton Salt Company, 119 NLRB 1402; National Dairy Products Company, 126 NLRB 434.

from engaging in any like or related conduct in derogation of its statutory duty to bargain.

2. Take the following affirmative action which it is found will effectuate the policies of the Act:

(a) Recognize the Union as the exclusive bargaining representative of its employees in the unit described by the Board in its certification dated October 2, 1961, and honor the written collective-bargaining agreement which it entered into with the Union, as found above.

(b) Post at its plant in New Orleans, Louisiana, the attached notice marked "Appendix."[3/] Copies of such notice, to be furnished by the Regional Director for Region 15, shall, after being duly signed by the Company's representative, be posted by the Company immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Company to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify said Regional Director, in writing, within 10 days from the date of this order, what steps have been taken to comply herewith.

Dated, Washington, D. C. March 3, 1966.

/s/ Frank W. McCulloch
Chairman

/s/ John H. Fanning
Member

/s/ Sam Zagoria
Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

3/ In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "a Decision and Order" the words "a Decree of the United States Court of Appeals, Enforcing an Order."

APPENDIX

NOTICE TO ALL EMPLOYEES

PURSUANT TO

A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

> WE WILL recognize UNITED STEELWORKERS OF AMERICA as the exclusive bargaining representative of our employees in the unit described by the Board in its certification dated October 2, 1961, and will honor the collective-bargaining agreement which we and that Union executed on or before May 8, 1964.

THE CRESCENT BED COMPANY, INC.
(Employer)

Dated _____ By _____
(Representative) (Title)

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, T 6024 Federal Building (Loyola), 701 Loyola Avenue, New Orleans, Louisiana 70113 (Tel. No. 527-6391), if they have any questions concerning this notice or compliance with its provisions.